

# Emergency Rules

## DECLARATION OF EMERGENCY

**Department of Agriculture and Forestry  
Office of Agriculture and Environmental Sciences**

Pesticide Restrictions (LAC 7:XXIII.143)

In accordance with the Administrative Procedure Act R.S. 49:953(B) and R.S. 3:3203(A), the Commissioner of Agriculture and Forestry is exercising the emergency provisions of the Administrative Procedure Act in adopting the following Rule governing the application of certain pesticides in certain parishes.

Currently LAC 7:XXIII.143.C prohibits the application of certain pesticides by commercial applicators between March 15 and September 15 in the parishes in Subsection C. Due to current weather and crop conditions the time frame for application of these pesticides needs to be extended from April 1, 2004 to September 15, 2004 to insure that farmland can be economically and properly prepared for crop planting. If the farmland cannot be properly prepared crops cannot be planted and subsequently harvested. Louisiana agriculture has been hit by adverse weather conditions for the last four years causing a severe adverse economic impact on Louisiana's economy. An inability to properly and timely plant crops this year will devastate Louisiana agriculture and Louisiana's economy

Therefore, the Commissioner of Agriculture and Forestry has determined that failure to extend the time frame for application of these pesticides in the parishes listed constitutes an imminent peril to the health, safety and welfare of the Louisiana agricultural community, the citizens of Louisiana and the economy of Louisiana.

This Rule becomes effective upon signature and will expire at 12:01 a.m. on September 15, 2004.

### Title 7

## AGRICULTURE AND ANIMALS

### Part XXIII. Advisory Commission on Pesticides

#### Chapter 1. Advisory Commission on Pesticides

#### Subchapter I. Regulations Governing applications of Pesticides.

#### §143. Restrictions on Application of Certain Pesticides

A. - B. ...

C. The pesticides listed in §143.B shall not be applied by commercial applicators between March 31, 2004 and September 15, 2004 in the parishes listed below.

1. Avoyelles	16. Morehouse
2. Bossier	17. Natchitoches
3. Caddo	18. Ouachita
4. Caldwell	19. Pointe Coupee
5. Catahoula	20. Rapides
6. Claiborne, Ward 4	21. Red River
7. Concordia	22. Richland
8. DeSoto, Ward 7	23. St. Landry
9. East Carroll	24. St. Martin, Ward 5
10. Evangeline Wards 1, 3 and 5	25. Tensas

11. Franklin	26. Union
12. Grant	27. West Carroll
13. Iberville Ward 9	28. West Baton Rouge Wards 5, 6, and 7
14. LaSalle	29. Winn, Ward 7

D. - P.6.a.iv. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203, R.S. 3:3242 and R.S. 3:3249.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:189 (April 1983), amended LR 10:196 (March 1984), LR 11:219 (March 1985), LR 11:942 (October 1985), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:953 (September 1992), LR 19:1119 (September 1993), LR 21:668 (July 1995), LR 24:281 (February 1998), LR 24:2076 (November 1998), LR 26:1428 (July 2000), LR 26:1966 (September 2000), LR 27:279 (March 2001), LR 27:1672 (October 2001), LR 30:

Bob Odom  
Commissioner

0404#003

## DECLARATION OF EMERGENCY

**Department of Agriculture and Forestry  
Office of Agriculture and Environmental Sciences  
Division of Pesticides and Environmental Programs**

Pesticide Restrictions? Use of the Pesticide Icon  
(LAC 7:XXIII.143)

In accordance with the Administrative Procedures Act R.S. 49:953(B) and R.S. 3:3203(A), the Commissioner of Agriculture and Forestry is exercising the emergency provisions of the Administrative Procedure Act in adopting the following Rule for the implementation of regulations governing the use of the pesticide, Icon (fipronil).

Icon is an essential pesticide in the control of rice pests. Without its use the rice crop in Louisiana is in imminent danger of being damaged by pests, to the extent that a substantial reduction in rice yield will result. Failure to control rice pests, therefore, poses an imminent peril to the economy of the State of Louisiana and to the rice growing parishes of Louisiana. The cumulative effect of Icon as a pesticide, saltwater intrusion, anticipated high water temperatures, and other weather related factors pose an imminent peril to the environment and to the economy of the State of Louisiana and to the rice growing parishes of Louisiana. The application of Icon in accordance with its label and labeling, but inconsistent with the department's rules and regulation and the potential misuse of this pesticide poses an imminent peril to the public health, safety and welfare and to the environment, especially if it gets into the waterways of this state.

The department has, therefore, determined that this Emergency Rule implementing a monitoring and registration program and governing Icon applications, during the current

crop year, are necessary in order to alleviate these perils. Information will be gathered to determine whether the effectiveness of this chemical outweighs any potential risk to the public or the environment.

The Rule becomes effective upon signature, March 22, 2004, and will remain in effect 120 days.

#### **Title 7**

### **AGRICULTURE AND ANIMALS**

#### **Part XXIII. Pesticide**

#### **Chapter 1. Advisory Commission on Pesticides**

#### **Subchapter I. Regulations Governing Application of Pesticides**

#### **§143. Restrictions on Application of Certain Pesticides**

A. - M.2. ...

N. Persons applying Icon to rice seed and persons selling or planting Icon treated rice seed, intended to be planted in Acadia, Allen, Beauregard, Calcasieu, Cameron, Evangeline, Iberia, Jefferson Davis, Lafayette, St. Landry, St. Martin, St. Mary, and Vermillion parishes shall comply with the following.

##### **1. Registration Requirements**

a. The commissioner hereby declares that prior to making any application of Icon to rice seed, the seed treatment owner/operator must first register such intent by notifying the Division of Pesticides and Environmental Programs ("DPEP") in writing.

b. The commissioner hereby declares that prior to selling Icon treated rice seed, the dealer must first register such intent by notifying the DPEP in writing.

c. The commissioner hereby declares that prior to making aerial applications of Icon treated rice seed, the aerial owner-operator must first register such intent by notifying the DPEP in writing.

2. Growers of rice shall not force or coerce applicators to apply Icon treated rice, when the applicators, conforming to the Louisiana pesticide laws and rules and regulations or to the pesticide label and labeling, deem it unsafe to make such applications. Growers found to be in violation of this section shall forfeit their right to use Icon treated rice seed, subject to appeal to the Advisory Commission on Pesticides.

##### **3. Icon Application Restriction**

a. Do not apply Icon treated rice seed by ground within 25 feet, or by air within 100 feet of lakes, reservoirs, rivers, permanent streams, marshes or natural ponds, estuaries and commercial fish farm ponds.

b. Do not allow Icon treated rice seed to drift into neighboring fields, ponds, streams or estuaries with fish, shellfish, or crustaceans (including crawfish).

c. All Icon label and labeling use restrictions shall be strictly followed.

##### **4. Monitoring of Icon**

a. Rice seed treaters, registered to treat rice seed with Icon, shall report daily to the DPEP, on forms prescribed by the commissioner, all treatments of Icon to rice seed. Information shall include but not be limited to:

- i. pounds treated;
- ii. treatment rate;
- iii. pounds sold or distributed;
- iv. purchaser and/or grower name, address, and phone number.

b. Dealers selling Icon treated rice seed shall report daily, to the DPEP, on forms prescribed by the commissioner

all sales of Icon treated rice seed. Information shall include but not be limited to:

- i. pounds sold;
- ii. treatment rate;
- iii. acres to be planted,;
- iv. planting date;
- v. purchaser and/or grower name, address, parish and phone number;
- vi. location and parish of field to be planted;
- vii. planting applicator-owner/operator (aerial or ground).

c. Aerial Owner/operators planting Icon treated rice seed shall provide and maintain records daily, on forms prescribed by the Commissioner all applications of Icon treated rice seed. Information shall include but not be limited to:

- i. pounds per acre planted;
- ii. acres planted;
- iii. date planted;
- iv. grower name, address, parish and phone number;
- v. location and parish of field planted;
- vi. pilot's name and certification number.

5. Upon determination by the Commissioner that a threat or reasonable expectation of a threat to human health or to the environment exists, he may consider:

- a. stop orders for use, sales, or application;
- b. label changes;
- c. remedial or protective orders;
- d. any other relevant remedies.

O. - P.a.iv. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203, R.S. 3:3242 and R.S. 3:3249.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:169 (April 1983), amended LR 10:196 (March 1984), LR 11:219 (March 1985), LR 11:942 (October 1985), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:953 (September 1992), amended LR 19:791 (June 1993), LR 21:668 (July 1995), LR 24:281 (February 1998), LR 24:2076 (November 1998), LR 26:1428 (July 2000), LR 26:1966 (September 2000), LR 27:279 (March 2001), LR 30:

Bob Odom  
Commissioner

0404#002

### **DECLARATION OF EMERGENCY**

#### **Tuition Trust Authority Office of Student Financial Assistance**

Student Tuition and Revenue Trust (START Saving)  
Program? Definitions and Deposits  
(LAC 26:VI.107 and 305)

The Louisiana Tuition Trust Authority (LATTa) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend rules of the Student Tuition Assistance and Revenue Trust (START Saving) Program (R.S. 17:3091 et seq.).

This Emergency Rule is necessary to allow the Louisiana Office of Student Financial Assistance and educational institutions to effectively administer these programs. A delay

in promulgating Rules would have an adverse impact on the financial welfare of the eligible students and the financial condition of their families. LATTA has determined that this Emergency Rule is necessary in order to prevent imminent financial peril to the welfare of the affected students.

This Declaration of Emergency is effective April 1, 2004, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

## **Title 28 EDUCATION**

### **Part VI. Student Financial Assistance? Higher**

#### **Education Savings? Tuition Trust Authority**

##### **Chapter 1. General Provisions**

##### **§107. Applicable Definitions**

*Account Owner?* the person(s), independent student, organization or group that completes the START Saving Program owner's agreement on behalf of a beneficiary and is the account owner of record of all funds credited to the account.

*Beneficiary?* the person named by the account owner in the Education Savings Account (ESA) owner's agreement (or the person named by LATTA when authorized to make such a designation by the owner of an account that is classified under §303.A.5, as the individual entitled to apply the account balance, or portions thereof, toward payment of their qualified higher education expenses.

*Beneficiary's Family?* for the purpose of §303.A.5, one of the following persons:

1. the beneficiary's parent(s) or court order custodian, or
2. a person who claims the beneficiary as a dependent on his or her federal income tax return for the previous year; or
3. a person who certified that the beneficiary lives with him, that he provides more than 50 percent of the beneficiary's support for the previous year and that he was not required to file an income tax return for the previous year.

*Current Value?* the value of an education savings account at a given point in time.

1. The current value of fixed earnings investment options includes the accumulated value of the principal deposited, earnings on deposits, Earnings Enhancements (EE's) allocated to the account and the earnings on the EE's.

2. The current value of variable earnings investment options includes the number of units in the investment option purchased multiplied by the current value of each unit plus the Earnings Enhancements (EE's) allocated to the account and the earnings on the EE's. This value may be more or less than the amount originally deposited.

*Disabled or Disability?* an individual who is considered to be disabled because he/she is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. An individual shall not be considered disabled unless he furnishes proof of the existence thereof in such form and manner as LATTA may require.

*Earnings Enhancement (EE)?* a payment allocated to an ESA, on behalf of the beneficiary of the account, by the

state. The amount of the annual EE is calculated based upon the classification of an account, the annual federal adjusted gross income of the account owner, and total annual deposits of principal into an ESA, including deposits in fixed earning and variable earnings options. Earnings Enhancements, and the interest earned thereon, may only be used to pay the beneficiary's qualified higher education expenses, or portion thereof, at an eligible educational institution and cannot be refunded.

*Education Savings Account (ESA)?* a savings account established by a natural person or a legal entity to pay qualified higher education expenses of the designated beneficiary.

*Educational Term?* a semester, quarter, term, summer session, inter-session, or an equivalent unit.

*Eligible Educational Institution either?*

1. a state college or university or a technical college or institute or an independent college or university located in this state that is accredited by the regional accrediting association, or its successor, approved by the U.S. Secretary of Education and eligible to participate in a program under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1088), as amended; or

2. a public or independent college or a university located outside this state that is accredited by one of the regional accrediting associations, or its successor, approved by the U.S. Secretary of Education and eligible to participate in a program under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1088), as amended; or

3. a Louisiana licensed proprietary school, licensed pursuant to R.S. Chapter 24-A of Title 17, and any subsequent amendments thereto and is eligible to participate in a program under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1088), as amended.

*False or Misleading Information?* a statement or response made by a person, which is knowingly false or misleading, and made for the purpose of establishing a program account and/or receiving benefits to which the person would not otherwise be entitled.

*Fixed Earnings?* the placement of all deposits in an ESA, to include the interest earned thereon, in investments that normally provide a fixed rate of return for a specific period of time.

*Fully Funded Account?* an account in which the current value has equaled or exceeded the amount that is five times the annual qualified higher education expenses at the highest cost Louisiana public college or university, projected to the scheduled date of first enrollment. The projected qualified higher education expenses at each eligible educational institution shall be updated by the administering agency. On the date of the beneficiary's first enrollment in an eligible educational institution, the fully funded amount will be fixed at five times the annual qualified higher education expenses at the highest cost Louisiana public college or university, for the academic year of enrollment or the projected amount, whichever is greater.

*Independent Student?* a person who is defined as an independent student by the Higher Education Act of 1965 (20 U.S.C. 1088) (HEA), as amended, and if required, files an individual federal income tax return in his/her name and designates him/herself as the beneficiary of an ESA.

1. The HEA defines independent student as a student who:

- a. reached 24 years of age prior to January of the year preceding the academic year for which the student is applying for aid;
- b. is a veteran of the U.S. Armed Forces, including a student who was activated to serve in Operation Desert Storm;
- c. is an orphan or a ward of the court or was a ward of the court until age 18;
- d. has legal dependents other than a spouse;
- e. is a graduate or professional student;
- f. is married; or
- f. has been determined independent by a financial aid officer exercising professional judgment in accordance with applicable provisions of the HEA.

2. An independent student may only open an account as an account owner if he/she is 18 years or older.

*Legal Entity?* juridical person including, but not limited to, groups, trusts, estates, associations, organizations, partnerships, and corporations that are incorporated, organized, established or authorized to conduct business in accordance with the laws of one or more states or territories of the United States. A natural person is not a legal entity.

*Louisiana Education Tuition and Savings Fund (the Fund)?* a special permanent fund maintained by the Louisiana State Treasurer for the purpose of the START Saving Program, and is the account into which all initial deposits made to ESAs are deposited. The fund includes the Savings Enhancement Fund, which is a special sub-account designated to receive Earnings Enhancements appropriated by the state, and interest earned thereon.

*Louisiana Office of Student Financial Assistance (LOSFA)?* the agency of state government responsible for administering the START Saving Program under the direction of the Louisiana Tuition Trust Authority.

*Louisiana Resident?*

1. any person who resided in the state of Louisiana on the date of the application and who has manifested intent to remain in the state by establishing Louisiana as legal domicile, as demonstrated by compliance with all of the following:

- a. if registered to vote, is registered to vote in Louisiana;
- b. if licensed to drive a motor vehicle, is in possession of a Louisiana driver's license;
- c. if owning a motor vehicle located within Louisiana, is in possession of a Louisiana registration for that vehicle;
- d. if earning an income, has complied with state income tax laws and regulations;

2. a member of the Armed Forces stationed outside of Louisiana, who claims Louisiana on his/her official DD Form 2058 as his/her *legal residence* for tax purposes, and is in compliance with state income tax laws and regulations, shall be considered eligible for program participation. A member of the Armed Forces stationed in Louisiana under permanent change of station orders shall be considered eligible for program participation;

3. persons less than 21 years of age are considered Louisiana residents if they reside with and are dependent

upon one or more persons who meet the above requirements;

4. a legal entity is considered to be a Louisiana resident if it is incorporated, organized, established or authorized to conduct business in accordance with the laws of Louisiana or registered with the Louisiana Secretary of State to conduct business in Louisiana and has a physical place of business in Louisiana.

*Louisiana Tuition Trust Authority (LATTA)?* the statutory body responsible for the administration of the START Saving Program.

*Maximum Allowable Account Balance?* the amount, determined annually, and effective on August 1 of each year, and expressed as a current dollar value, which is equal to five times the qualified higher education expenses at the highest cost institution in the state. Once the current value of an ESA equals or exceeds the maximum allowable account balance, principal deposits will no longer be accepted for the account. However, if subsequent increases occur in the maximum allowable account balance, principal deposits may resume until the current value equals the most recently determined maximum allowable account balance.

*Member of the Family,* with respect to the designated beneficiary,?

1. the spouse of such beneficiary; or
2. an individual who bears one of the following relationships to such beneficiary:
  - a. a son or daughter of the beneficiary, or a descendant of either;
  - b. a stepson or stepdaughter of the beneficiary;
  - c. a brother, sister, stepbrother, or stepsister of the beneficiary;
  - d. the father or mother of the beneficiary, or an ancestor of either;
  - e. a stepfather or stepmother of the beneficiary;
  - f. a son or daughter of a brother or sister of the beneficiary;
  - g. a brother or sister of the father or mother of the beneficiary; or
  - h. a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the beneficiary; or
  - i. a first cousin of the beneficiary; or
3. the spouse of an individual listed in Items 2(a) through (i).

*Natural Person?* a human being.

*Other Person,* with respect to any designated beneficiary,? any person, other than the beneficiary, whether natural or juridical, who is not a member of the family, including but not limited to individuals, groups, trusts, estates, associations, organizations, partnerships, corporations, and custodians under the Uniform Transfer to Minors Act (UTMA).

*Owner's Agreement?* the agreement for program participation that the account owner completes and signs. It incorporates, by reference, R.S. 17:3091, et seq., and the rules promulgated by LATTA to implement this statutory provision and any other state or federal laws applicable to the agreement and the terms and conditions as set forth therein.

*Person?* a human being or a juridical entity.

*Qualified Higher Education Expenses?*

1. tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible educational institution; and

2. room and board; and

3. expenses for special needs services in the case of a special needs beneficiary, which are incurred in connection with such enrollment or attendance.

*Rate of Expenditure?* the rate [see §309.B] per educational term at which the EE's may be disbursed from an ESA to pay for the beneficiary's qualified higher education expenses at an eligible educational institution. For each disbursement requested by an account owner, EE's and the earnings thereon will be disbursed from the account in the same ratio that they bear to the current value of the account.

*Redemption Value?* the cash value of the moneys in an ESA invested in a fixed earnings option that are attributable to the sum of the principal deposited and the earnings on principal authorized to be credited to the account by LATTA, less any disbursements and refunds. The redemption value does not include any EEs allocated to the account or the earnings on EEs. Redemption value is not applicable to an ESA invested in variable earnings.

*Refund Recipient?* the person designated by the account owner in the START Saving Program owner's agreement or by operation of law to receive refunds from the account. The refund recipient can only be the account owner or the beneficiary.

*Room and Board?* the reasonable cost for the educational term incurred by the designated beneficiary for room and board while attending an eligible educational institution on at least a half time basis, not to exceed the maximum amount included for room and board for such period in the cost of attendance (as currently defined in §472 of the Higher Education Act of 1965, 20 U.S.C. 1087ll) as determined by the eligible educational institution for such period, or if greater, the actual invoice amount the student residing in housing owned or operated by the eligible education institution is charged by such institution for room and board.

*Saving Enhancement Fund?* the sub-account established within the Tuition and Savings Fund by the State Treasurer to receive funds appropriated by the legislature or donated from any other source for the purpose of funding EEs.

*Scheduled Date of First-Enrollment,* for a dependent Beneficiary, is the month and year in which the beneficiary turns 18 years of age. For an independent student over the age of 18, the scheduled date of first-enrollment is the date the account is opened. This date is used to determine eligibility for EEs. See the term *fully funded account*.

*Special Needs Services and Beneficiary?* services provided to a beneficiary because the student has one or more disabilities.

*Trade Date?* the date that a deposit to an investment option that includes variable earnings is assigned a value in units or the date a disbursement or refund from an investment option that includes variable earnings is assigned a value or the date of a change in investment options that includes variable earnings is assigned a value, whichever is applicable.

*Tuition?* the mandatory educational charge required as a condition of enrollment and is limited to undergraduate enrollment. It does not include non-residence fees, laboratory fees, room and board nor other similar fees and charges.

*Variable Earnings?* that portion of funds in an ESA invested in equities, bonds, short-term fixed income investments or a combination of any of the three.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:712 (June 1997), amended LR 24:1268 (July 1998), LR 25:1794 (October 1999), LR 26:2260 (October 2000), LR 27:37 (January 2001), LR 27:1222 (August 2001), LR 27:1876 (November 2001), LR 28:450 (March 2002), LR 28:777 (April 2002), LR 28:2334 (November 2002), LR 29:556 (April 2003), LR 30:

**Chapter 3. Education Savings Account**

**§305. Deposits to Education Savings Accounts**

A. - E.1. ...

2. Deposits for investment options that include variable earnings will be assigned a trade date based on the method of deposit and the date of receipt.

a. Deposits by check will be assigned a trade date five business days after the business day during which they were received.

E.2.b - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:715 (June 1997), amended LR 24:1270 (July 1998), LR 26:2263 (October 2000), LR 27:1880 (November 2001), LR 30:

George Badge Eldredge  
General Counsel

0404#017

**DECLARATION OF EMERGENCY**

**Tuition Trust Authority  
Office of Student Financial Assistance**

Student Tuition and Revenue Trust (START Saving)  
Program? Interest Rates 2004 (LAC 26:VI.315)

The Louisiana Tuition Trust Authority (LATTA) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend rules of the Student Tuition Assistance and Revenue Trust (START Saving) Program (R.S. 17:3091 et seq.).

This Emergency Rule is necessary to allow the Louisiana Office of Student Financial Assistance and educational institutions to effectively administer these programs. A delay in promulgating rules would have an adverse impact on the financial welfare of the eligible students and the financial condition of their families. LATTA has determined that this Emergency Rule is necessary in order to prevent imminent financial peril to the welfare of the affected students.

This Declaration of Emergency is effective February 17, 2004, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

**Title 28**  
**EDUCATION**

**Part VI. Student Financial Assistance? Higher  
Education Savings? Tuition Trust Authority**

**Chapter 3. Education Savings Account**

**§315. Miscellaneous Provisions**

A. - B.8. ...

9. For the year ending December 31, 2003, the Louisiana Education Tuition and Savings Fund earned an interest rate of 5.33 percent.

10. For the year ending December 31, 2003, the Earnings Enhancements Fund earned an interest rate of 5.17 percent.

C. - R. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:718 (June 1997), amended LR 24:1274 (July 1998), LR 26:1263 (June 2000), repromulgated LR 26:2267 (October 2000), amended LR27:1221 (August 2001), LR 27:1884 (November 2001), LR 28:1761 (August 2002), LR 28:2335 (November 2002), LR 29:2038 (October 2003), LR 29:2374 (November 2003), LR 30:

George Badge Eldredge  
General Counsel

0404#016

**DECLARATION OF EMERGENCY**

**Department of Environmental Quality  
Office of Environmental Assessment  
Environmental Planning Division**

Notification Requirements for Unauthorized Emissions  
(LAC 33:I.3925 and 3931)(OS052E2)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allows the Department of Environmental Quality ("department") to use emergency procedures to establish rules, and R.S. 30:2011, the secretary of the department hereby finds that imminent peril to the public welfare exists and accordingly adopts the following Emergency Rule.

This is a renewal of Emergency Rule OS052E1, which was effective December 10, 2003, and published in the *Louisiana Register* on December 20, 2003. The department has proposed a Rule (OS052) on February 20, 2004, to promulgate these regulation changes.

In the last two years, the Baton Rouge Nonattainment Area (the parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge) has experienced exceedances of the one-hour ozone National Ambient Air Quality Standard (NAAQS) promulgated by the United States Environmental Protection Agency (US EPA). These exceedances did not occur during circumstances that typically result in excessive ozone formation and led to ozone readings the Baton Rouge area has not experienced in a decade. The ozone readings for two separate episodes in September 2002 and July 2003 were 164 parts per billion (ppb) and 174 ppb respectively, over 30 percent above the standard. Monitoring results from these exceedances indicate a high rate and efficiency of ozone production, which was

limited spatially to the immediate Baton Rouge area. These ozone episodes correspond very well to the kind of episodes that have occurred in the Houston/Galveston areas. The Texas Air Quality Study, conducted in the Houston/Galveston areas, concluded that the reactivity of the hydrocarbons was most often dominated by low molecular weight alkenes and aromatics resulting in explosive ozone formation. Results from computer simulations based on Houston's industrial regions suggest emissions of as little as 100 pounds of light alkenes and aromatics can lead to 50 ppb or greater enhancements of ozone concentrations. Air quality sampling in the Baton Rouge area also showed substantial quantities of the mentioned ozone precursors. Baton Rouge's type of industry (petrochemical plants and refineries) and meteorological conditions are similar enough to Houston to warrant further investigation. The ozone formation experienced in the Baton Rouge area may similarly be the result of the emissions of "highly reactive" ozone precursors.

The department continues to need additional information regarding the unauthorized releases of these highly reactive ozone precursors to understand, predict, and prevent further exceedances of the ozone standard. This information is needed immediately to monitor the remainder of the 2003 and the 2004 ozone season in the hopes of achieving attainment of the standard. Facilities are to continue to follow the LAC 33:I.Chapter 39 reporting protocols and, whenever possible, to utilize the new notification procedures found at <http://www.deq.louisiana.gov/surveillance/irf/forms> and <http://www.deq.louisiana.gov/surveillance>.

Revisions to the regulations include additional information to be included on the written notification report required in LAC 33:I.3925. This information will enhance the investigation of highly reactive VOC that is in progress. The table in LAC 33:I.3931 is being amended for clarification, and a footnote is revised to clarify that for releases of highly reactive VOC, the lowered Reportable Quantity only applies to releases to the atmosphere.

This Emergency Rule is effective on April 8, 2004, and shall remain in effect for a maximum of 120 days or until a final Rule is promulgated, whichever occurs first. For more information concerning OS052E2, you may contact the Regulation Development Section at (225) 219-3550.

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part I. Office of the Secretary**

**Subpart 2. Notification**

**Chapter 39. Notification Regulations and Procedures  
for Unauthorized Discharges**

**Subchapter D. Notification Procedures**

**§3925. Written Notification Procedures for the  
Department of Environmental Quality**

A. - B.3. ...

4. details of the circumstances (unauthorized discharge description and root cause) and events leading to any unauthorized discharge, including incidents of loss of sources of radiation, and if the release point is permitted:

a. the current permitted limit for the pollutant(s) released;

b. the permitted release point/outfall ID; and

c. which limits were exceeded (SO<sub>2</sub> limit, mass emission limit, opacity limit, etc.) for air releases;

5. common or scientific chemical name of each specific pollutant that was released as the result of an unauthorized discharge, including the CAS number and U.S. Department of Transportation hazard classification, and best estimate of amounts of any or all released pollutants (total amount of each compound expressed in pounds, include calculations);

B.6. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C) and 2204(A).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20:182 (February 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2443 (November 2000), LR 30:

### Subchapter E. Reportable Quantities for Notification of Unauthorized Discharges

#### §3931. Reportable Quantity List for Pollutants

A. - A.2. ...

B. Modifications or Additions. The following table contains modifications to the federal reportable quantity lists incorporated by reference in Subsection A of this Section, as well as reportable quantities for additional pollutants.

Pollutant	CAS No. <sup>1</sup>	RCRA <sup>2</sup> Waste Number	Pounds
Acetaldehyde	75070	U001	100 <sup>+</sup>
***			
[See Prior Text in Allyl chloride – Antimony*]			
Antimony Compounds	20008		100
Barium*	7440393		100
Barium compounds	20020		100
Biphenyl	92524		100
1-Butanol	71363	U031	5000/1000 <sup>@</sup>
Butenes (all isomers except 1,3 butadiene)	25167673		100 <sup>+</sup>
n-Butyl alcohol	71363	U031	5000/1000 <sup>@</sup>
***			
[See Prior Text in Carbonic dichloride]			
Carbonyl sulfide	463581		100
***			
[See Prior Text in Chlorinated Dibenzo Furans, all isomers - Chromium <sup>3</sup> *]			
Chromium compounds	20064		100
***			
[See Prior Text in Copper <sup>3</sup> ]			
Copper Compounds	20086		100
***			
[See Prior Text in Cumene]			
1,3-Dichloropropylene	542756		100
***			
[See Prior Text in Ethyl acrylate]			
Ethylene	74851		5000 or 100 <sup>+</sup>
Ethylene glycol	107211		5000
Glycol ethers **			100
***			
[See Prior Text in Hexane - 1,3-Isobenzofurandione]			
Manganese*	7439965		100
Manganese compounds			100
***			
[See Prior Text in Methanethiol]			
Methyl acrylate	96333		10
***			
[See Prior Text in Methyl ethyl ketone (MEK)- 4-Methyl-2-pentanone]			
Methylene diphenyl isocyanate	101688		1000
***			
[See Prior Text in Nitric acid – Propionaldehyde]			

Pollutant	CAS No. <sup>1</sup>	RCRA <sup>2</sup> Waste Number	Pounds
Propylene	115071		100 <sup>+</sup>
***			
[See Prior Text in Strontium sulfide – Thiomethanol]			
Toluene	108883	U220	100 <sup>+</sup>
***			
[See Prior Text in Vinyl acetate - Volatile Organic Compounds not otherwise listed <sup>4</sup> ]			
Highly reactive volatile organic compounds listed below: acetaldehyde; butenes (all isomers); ethylene; propylene; toluene; xylene (all isomers); and/or isoprene <sup>5</sup>			100 <sup>+</sup>
***			
[See Prior Text in F003 – F005, Methyl ethyl ketone]			

Note \* - Note<sup>4</sup> ...

<sup>5</sup> The combined emission of these highly reactive VOC shall be totaled to determine if a RQ has been exceeded.

Note<sup>@</sup> ...

<sup>+</sup> The RQ listed denotes the reportable quantities that will apply to unauthorized emissions based on total mass emitted into the atmosphere for facilities in the following parishes: Ascension, East Baton Rouge, Iberville, Livingston, West Baton Rouge, St. Charles, St. James, St. John the Baptist, Pointe Coupee, and West Feliciana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), 2204(A), and 2373(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20:183 (February 1994), amended by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:944 (September 1995), LR 22:341 (May 1996), amended by the Department of Environmental Quality, Office of the Secretary, LR 24:1288 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:698 (May 2003), LR 30:

Mike D. McDaniel, Ph.D.  
Secretary

0404#024

### DECLARATION OF EMERGENCY

#### Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

Remediation of Sites with Contaminated Media  
(LAC 33:V.109)(HW084E2)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), which allows the Department of Environmental Quality to use emergency procedures to establish Rules, and under the authority of R.S. 30:2011, the secretary of the department hereby declares that an emergency action is necessary in order to implement Rules to address the remediation of sites with contaminated environmental media.

This is a renewal of Emergency Rule HW084E1, which was effective December 8, 2003, and published in the *Louisiana Register* on December 20, 2003. The department

is drafting a Rule to promulgate these regulation changes. Additional language has been added to this renewal of the Emergency Rule to further define the management of contaminated media as nonhazardous.

Current regulation causes contaminated environmental media to retain the description of having RCRA-listed waste "contained-in," therefore slowing the remediation of the site or possibly halting it completely due to administration and disposal issues. This Rule will remove a regulatory hurdle that deters site remediation. The incentive to remediate pollution stems from the resulting substantially reduced disposal and transportation costs for contaminated environmental media that are not required to be managed in the same manner as hazardous waste. The Rule will also result in simplification of the waste handling process by reducing administrative requirements and providing greater consistency with non-RCRA waste handling requirements and practices. This will provide strong motivation to initiate and accelerate voluntary remediation of contaminated sites without increasing risks to human health or the environment.

This Emergency Rule is effective on April 6, 2004, and shall remain in effect for a maximum of 120 days or until a final Rule is promulgated, whichever occurs first. For more information concerning HW084E2 you may contact the Regulation Development Section at (225) 219-3550.

#### **Title 33**

### **ENVIRONMENTAL QUALITY**

## **Part V. Hazardous Waste and Hazardous Materials**

### **Subpart 1. Department of Environmental**

### **Quality? Hazardous Waste**

## **Chapter 1. General Provisions and Definitions**

### **§109. Definitions**

For all purposes of these rules and regulations, the terms defined in this Chapter shall have the following meanings, unless the context of use clearly indicates otherwise.

\* \* \*

*Hazardous Waste?* a solid waste, as defined in this Section, is a hazardous waste if:

1. - 2.c.vii. ...

d. it consists of environmental media (soil, sediments, surface water, or groundwater) that contain one or more hazardous wastes listed in LAC 33:V.4901 (unless excluded by one of the exclusions contained in this definition) or that exhibit any of the characteristics of hazardous waste identified in LAC 33:V.4903. Environmental media no longer contain a hazardous waste when concentrations of the hazardous constituents that serve as the basis for the hazardous waste being listed (as shown in LAC 33:V.4901, Table 6, Table of Constituents that Serve as a Basis for Listing Hazardous Waste, or if constituents are not listed in Table 6 refer to LAC 33:V.2299 (formerly Chapter 22 Appendix) for appropriate constituents, or if not listed in either of these locations shall be determined by the department on a case-by-case basis) remaining in the media are below applicable RECAP Screening Standards (LAC 33:I.Chapter 13) and the media no longer exhibit any of the characteristics of hazardous waste identified in LAC 33:V.4903. Land disposal treatment standards (LAC

33:V.2299, formerly Chapter 22 Appendix) apply prior to placing such environmental media into a land disposal unit even though the media may no longer contain a hazardous waste.

e. *Rebuttable Presumption for Used Oil.* Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in LAC 33:V.4901. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (e.g., by using an analytical method from LAC 33:V.Chapter 49.Appendix A to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in LAC 33:V.3105.Table 1).

i. The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner or disposed.

ii. The rebuttable presumption does not apply to used oils contaminated with Chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

3. - 6.b....

\* \* \*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2180 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790, 791 (November 1988), LR 15:378 (May 1989), LR 15:737 (September 1989), LR 16:218 (March 1990), LR 16:220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:723 (July 1992), LR 18:1375 (December 1992), repromulgated by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 19:626 (May 1993), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:814 (September 1996), LR 23:564 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:655 (April 1998), LR 24:1101 (June 1998), LR 24:1688 (September 1998), LR 25:433 (March 1999), repromulgated LR 25:853 (May 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:269 (February 2000), LR 26:2465 (November 2000), LR 27:291 (March 2001), LR 27:708 (May 2001), LR 28:999 (May 2002), LR 28:1191 (June 2002), LR 29:318 (March 2003), LR 30:

Mike D. McDaniel, Ph.D.  
Secretary

0404#023



## DECLARATION OF EMERGENCY

### Office of the Governor Division of Administration Racing Commission

Claiming Rule (LAC 35:XI.9905 and 9913)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedures Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following Emergency Rule effective April 17, 2004, and it shall remain in effect for 120 days or until this Rule takes effect through the normal promulgation process, whichever comes first.

The Louisiana State Racing Commission finds it necessary to (1) readopt §9905 to ensure proper timing when claiming a horse, and (2) amend §9913 to protect the successful claimant's ownership at the moment the horse becomes a starter.

#### Title 35

#### HORSE RACING

#### Part XI. Claiming Rules and Engagements

#### Chapter 99. Claiming Rule

#### §9905. Timing of Entering Next Claiming Race

Note: This rule is being reinstated; it was repealed in 1996.

A. Except as otherwise provided herein, a claimed horse shall not enter in starter, optional or claiming races for 30 days after being claimed in a race in which the determining eligibility price is less than 25 percent more than the price at which the horse was claimed. The day claimed shall not count, but the following calendar day shall be the first day and the horse shall be entitled to enter whenever necessary so the horse may start on the 31st day following the claim for any claiming price. This provision shall not apply to starter handicaps in which the weight to be carried is assigned by the handicapper. A similar rule in other states will be recognized and enforced.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:142 and R.S. 4:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 30:

#### §9913. Vesting of Title; Tests

A. Title to a claimed horse shall be vested in the successful claimant at the time the horse becomes a starter. The successful claimant shall then become the owner of the horse whether alive or dead, sound or unsound, or injured at any time after leaving the paddock, during the race or after. However, the successful claimant may request on the claim blank at the time he makes his claim that the horse be tested for the presence of equine infectious anemia via a Coggins test. Should this test prove positive, it shall be cause for a horse to be returned to his previous owner and barred from racing in the state of Louisiana. The expense of the Coggins test and the maintenance of the horse during the period requested for the test shall be absorbed by the successful claimant. If such a test is requested the claimed horse will be sent to the retention barn of the Louisiana State Racing Commission where the state veterinarian will draw a blood sample, which sample shall be sent to a laboratory approved by the Louisiana Livestock Sanitary Board for the conduct of such test.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:142 and R.S. 4:148.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, amended by the Department of Commerce, Racing Commission, LR 2:446 (December 1976), repromulgated LR 3:42 (January 1977), LR 4:285 (August 1978), amended LR 5:136 (June 1979), amended by the Office of the Governor, Division of Administration, Racing Commission LR 30:

Charles A. Gardiner III  
Executive Director

0404#007

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

Personal Care Services? Long Term  
(LAC 50:XV.Chapter 129)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:XV.12903, 12905, and 12909 as authorized by LA. R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted a Rule to establish the provisions governing coverage of personal care services as an optional service under the Medicaid State Plan (*Louisiana Register*, Volume 29, Number 6). The bureau amended the June 20, 2003 rule to clarify covered services, revise the recipient qualifications and define the term "legally responsible relative" (*Louisiana Register*, Volume 29, Number 10). The bureau now proposes to amend the June 20, 2003 Rule and the October 1, 2003 emergency rule to establish provisions governing when a recipient may change personal care service providers and staffing requirements for personal care services agencies. In addition, the bureau proposes to amend the general provisions, standards for participation and the place of service requirements contained in the June 20, 2003 Rule. This action is being taken to promote the health and welfare of Medicaid recipients by ensuring that services are performed by qualified personnel.

#### Emergency Rule

Effective April 20, 2004, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the June 20, 2003 Rule and October 1, 2003 Emergency Rule governing personal care services to establish provisions governing when a recipient may change personal care service providers and staffing requirements for personal care services agencies. In addition, the bureau proposes to amend the general provisions, standards for participation and the place of service requirements contained in the June 20, 2003 Rule.

## **Title 50**

### **PUBLIC HEALTH? MEDICAL ASSISTANCE**

#### **Part XV. Services for Special Populations**

##### **Subpart 9. Personal Care Services**

##### **Chapter 129. Long Term**

##### **§12901. General Provisions**

A. ....

B. An assessment shall be performed for every recipient who requests personal care services. This assessment shall be utilized to identify the recipient's long term care needs, preferences, the availability of family and community supports and to develop the plan of care. The Minimum Data Set-Home Care (MDS-HC) System will be used as the basic assessment tool. However, other assessment tools may be utilized as a supplement to the MDS-HC to address the needs of special groups within the target population.

C. Authorization. Personal care services (PCS) shall be authorized by the Bureau of Health Services Financing or its designee. The bureau or its designee will review the completed assessment, supporting documentation from the recipient's primary physician, plan of care and any other pertinent documents to determine whether the recipient meets the medically necessity criteria for personal care services.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:911 (June 2003), amended LR 30:

##### **§12903. Covered Services**

A. Personal care services are defined as those services that provide assistance with the distinct tasks associated with the performance of the activities of daily living (ADL) and the instrumental activities of daily living (IADL). Assistance may be either the actual performance of the personal care task for the individual or supervision and prompting so the individual performs the task by him/herself. ADLs are those personal, functional activities required by an individual for continued well-being, health and safety. ADLs include tasks such as:

1. eating;
2. bathing;
3. dressing;
4. grooming;
5. transferring (getting in/out of the tub, from a bed to a chair);
6. reminding the recipient to take medication;
7. ambulation; and
8. toileting.

B. - C. ...

D. Constant or intermittent supervision and/or sitter services are not a component of personal care services.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003), amended LR 30:

##### **§12905. Recipient Qualifications**

A. Personal care services shall be available to recipients who are 65 years of age or older, or 21 years of age or older and disabled. Disabled is defined as meeting the disability criteria established by the Social Security Administration.

B. Personal care services for elderly or disabled recipients must meet medical necessity criteria as determined by the Bureau of Health Services Financing and must be prior authorized by Bureau or its designee. Personal care services are medically necessary if the recipient:

1. meets the medical standards for admission to a nursing facility, including all Preadmission Screening and Annual Resident Review (PASARR) requirements; and

2. is able, either independently or through a responsible representative, to participate in his/her care and direct the services provided by the personal care services worker. A responsible representative is defined as the person designated by the recipient to act on his/her behalf in the process of accessing and/or maintaining personal care services; and

3. faces a substantial possibility of deterioration in mental or physical condition or functioning if either home and community-based services or nursing facility services are not provided in less than 120 days. This criterion is considered met if:

a. the recipient is in a nursing facility and could be discharged if community-based services were available;

b. is likely to require nursing facility admission within the next 120 days; or

c. has a primary caregiver who has a disability or is over the age of 70.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003), amended LR 30:

##### **§12907. Recipient Rights**

A. - A.9. ....

B. Changing Providers. Recipients may request to change PCS providers without cause once after each three month service authorization period. Recipients may request to change PCS providers with good cause at any time during the service authorization period. Good cause is defined as the failure of the provider to furnish services in compliance with the service plan. Good cause shall be determined by the Bureau or its designee.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003), amended LR 30:

##### **§12909. Standards for Participation**

A. - B.2. ...

3. ensure that a criminal background check is performed for all direct care and supervisory staff and that the results are maintained in each employee's personnel record;

a. The criminal background check must be performed by the Office of the State Police or an agency authorized by the Office of the State Police.

i. The agency may make an offer of temporary employment to an individual pending the results of the criminal background check. In such instances, the worker shall perform his/her duties under the direct supervision of a permanent employee or in the presence of a member of the recipient's immediate family or of a care giver designated by the immediate family;

4. ensure that the direct care staff is qualified to provide personal care services. Assure that all new staff satisfactorily completes an orientation and training program in the first 30 days of employment;

5. - 10. ...

11. have proof of general liability insurance of at least \$200,000. The certificate holder shall be the Department of Health and Hospitals; and

12. maintain an office in each region in which it proposes to provide services. Consideration shall be given to an agency's request to provide services in one parish that is adjacent to its designated service region if the agency's office is within a 50-mile radius of that parish's borderline.

a. Each office must have hours of operation that conform to the customary operating hours for similar businesses in the local community and have written provisions for emergency contact that include a toll-free telephone line with 24-hour accessibility. The written policy governing emergency contact shall be made available to recipients and staff.

b. Each office must house the case records and billing documentation for the individuals served by that office.

c. Each office must also house the personnel and payroll records for all of the employees who are assigned to that office.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003), amended LR 30:

#### **§12911. Staffing Requirements**

A. Personal care services agencies participating in the Medicaid Program must ensure that all staff providing direct care to the recipient meets the qualifications for furnishing personal care services. The PCS worker shall demonstrate empathy toward the elderly and persons with disabilities, an ability to provide care to these recipients, and the maturity and ability to deal effectively with the demands of the job. In addition, all supervisors of direct care staff must meet the qualifications set forth in this §12911.

##### **B. Personal Care Services Worker Qualifications**

1. Age. The worker must be at least 18 years old or older at the time the offer of employment is made. Verification of age must be maintained in each employee's personnel record.

2. Education and Experience. All PCS workers must meet one of the following minimum education and experience qualifications:

a. a high school diploma or general equivalency diploma (GED); or

b. a trade school diploma in the area of human services; or

c. documented, verifiable experience providing direct care services to the elderly and/or persons with disabilities.

3. The PCS worker must have the ability to read and write in English as well as to carry out directions promptly and accurately.

C. Restrictions. A legally responsible relative is prohibited from being the paid PCS worker for a family member. Legally responsible relative is defined as the parent

of a minor child, foster parent, curator, tutor, legal guardian or the recipient's spouse.

##### **D. Supervisor Qualifications**

1. Education and Experience. PCS supervisory staff must meet one of the following minimum education and experience qualifications. A PCS supervisor must:

a. have a bachelor's degree from an accredited college or university in one of the following human service-related fields:

- i. social work;
- ii. psychology;
- iii. sociology;
- iv. physical therapy;
- v. occupational therapy;
- vi. recreational therapy; or
- vii. counseling; and

b. have two years of paid experience in a human service-related field providing direct services to the elderly and/or persons with disabilities;

Note: Thirty hours of graduate level course credit in any of the referenced human service-related fields may be substituted for the one year of required paid experience.

c. be a licensed registered nurse (RN) or a licensed practical nurse (LPN) with one year of paid experience as a RN or LPN providing direct services to the elderly and/or persons with disabilities; or

d. have a high school diploma or GED and five years of paid experience providing direct care services to the elderly and/or persons with disabilities.

##### **E. Supervisory Responsibilities**

1. The supervisor shall be responsible for assessing PCS workers' job performance, reviewing client cases, providing constructive feedback, and assisting staff to resolve problems and to provide services in a more effective manner using the following methods:

a. routine (at least quarterly) face-to-face meetings with each PCS worker; and

b. periodic (at least quarterly) unannounced visits to the recipient's residence to monitor service delivery and compliance with the plan of care and service plan.

2. Each supervisor shall be responsible for the supervision of no more than 15 PCS workers.

F. Training. Training for PCS workers and supervisors must be provided or arranged for by the personal care services agency at its own expense.

1. A minimum of eight hours of orientation must be provided to new direct care and supervisory employees within one week of employment. The orientation provided to staff shall include, but is not limited to:

- a. agency policies and procedures;
- b. staff duties and responsibilities;
- c. ethics and confidentiality;
- d. record keeping;
- e. a description of the population served by the agency; and

f. a discussion of issues related to providing care for these individuals, including physical and emotional problems associated with aging and disability.

2. New direct care staff must also receive training in cardiopulmonary resuscitation (CPR) and basic first aid within one week of employment. A current, valid certification for CPR and first aid may be accepted as verification of training.

3. A minimum of 16 hours of training must be furnished to new employees within 30 days of employment. The PCS agency training curriculum must, at a minimum, include the following components:

- a. communication skills;
- b. observation, reporting and documentation of the recipient status and the care or service furnished;
- c. basic infection control procedures;
- d. basic elements of body functioning and changes in body function that must be reported to a worker's supervisor;
- e. safe transfer techniques and ambulation;
- f. appropriate and safe techniques in personal hygiene and grooming that include:
  - i. bed bath;
  - ii. sponge, tub, or shower bath;
  - iii. sink, tub, bed shampoo;
  - iv. nail and skin care;
  - v. oral hygiene; and
  - vi. toileting and elimination;
- g. recognizing emergencies and knowledge of emergency procedures;
- h. maintenance of a clean, safe and healthy environment; and
- i. treating the recipient with dignity and respect, including the need to respect his/her privacy and property.

4. PCS workers and supervisors must satisfactorily complete a minimum of 20 hours of annual training related to the provision of personal care services. This training may include updates on the subjects covered in orientation and initial training. The eight hours of orientation required for new employees are not included as part of the hours required for the annual training.

5. Documentation. All required training must be documented in the employee's personnel record, including the date, time spent in the training session, subjects covered and the name of the individual who conducted the training. Verification of training shall be furnished to the Bureau or its designee upon request.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

#### **§12913. Place of Service**

A. Personal care services may be provided in the recipient's home or in another location outside of the recipient's home if the provision of these services allows the recipient to participate in normal life activities pertaining to the IADLs cited in the plan of care. The recipient's home is defined as the place where he/she resides such as a house, an apartment, a boarding house, or the house or apartment of a family member or unpaid primary care-giver. The following institutional settings are not considered to be a recipient's home:

1. a hospital;
2. an institution for mental disease;
3. a nursing facility; or
4. an intermediate care facility for the mentally retarded.

B. - D. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:913 (June 2003), amended LR 30:

Interested persons may submit written comments to Ben A. Bearden at the Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Frederick P. Cerise, M.D., M.P.H.  
Secretary

0404#082

### **DECLARATION OF EMERGENCY**

#### **Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing**

Private and Public Non-State Owned and  
Operated Hospitals? Inpatient Psychiatric  
Services Reimbursement Increase

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Emergency Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq. and shall be in effect for the maximum period allowed under the Act or until adoption of the Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule which established the prospective reimbursement methodology for inpatient psychiatric hospital services provided in either a free-standing psychiatric hospital or distinct part psychiatric unit of an acute care general hospital (*Louisiana Register*, Volume 19, Number 6). This Rule was subsequently amended to discontinue the practice of automatically applying an inflation adjustment to the reimbursement rates for inpatient psychiatric services in those years when the rates are not rebased (*Louisiana Register*, Volume 25, Number 5). The bureau now proposes to rebase the reimbursement rates paid for inpatient psychiatric hospital services provided in private and public non-state owned and operated free-standing psychiatric hospitals and distinct part psychiatric units based on the 24th percentile facility for costs reported on the cost report ending in SFY 2002 for services rendered to recipients under age 21. Payment for inpatient psychiatric hospital services provided to recipients over age 21 in these facilities shall be based on the 13th percentile facility for costs reported on the cost report ending in SFY 2002.

This action is being taken to protect the health and welfare of Medicaid recipients by encouraging the continued participation of hospitals that furnish psychiatric services in the Medicaid Program. It is estimated that implementation of this emergency rule will increase expenditures to private and public non-state owned and operated hospitals for inpatient psychiatric services by approximately \$551,559 for state fiscal year 2003-2004.

### **Emergency Rule**

Effective for dates of service on or after April 1, 2004, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases the reimbursement for inpatient psychiatric hospital services provided in private and public non-state owned and operated free-standing psychiatric hospitals and distinct part psychiatric units based on the 24th percentile facility for costs reported on the cost report ending in SFY 2002 for services rendered to recipients under age 21. Payment for inpatient psychiatric hospital services provided to recipients over age 21 in these facilities shall be based on the 13th percentile facility for costs reported on the cost report ending in SFY 2002. The costs utilized to determine the 13th and 24th percentile facility shall include all free-standing psychiatric hospitals and distinct part psychiatric units providing services to Medicaid recipients in the state. Costs shall be trended to the midpoint of the rate year using the Medicare PPS Market Basket Index. The application of inflationary adjustments in subsequent years shall be contingent on the appropriation of funds by the Legislature.

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Ben A. Bearden at the Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this public notice is available for review by interested parties at parish Medicaid offices.

Frederick P. Cerise, M.D., M.P.H.  
Secretary

0404#083

### **DECLARATION OF EMERGENCY**

**Department of Health and Hospitals  
Office of the Secretary  
Bureau of Health Services Financing**

Professional Services Program  
Physician Services  
Reimbursement Increase

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Emergency Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq. and shall be in effect for the maximum period allowed under the Act or until adoption of the Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reimburses professional services in accordance with an established fee schedule for Physicians' Current Procedural Terminology (CPT) codes, locally assigned codes and Health Care Financing Administration Common Procedure Codes (HCPC). Reimbursement for these services is a flat fee

established by the bureau minus the amount which any third party coverage would pay.

As a result of the allocation of additional funds by the Legislature during the 2000 Second Extraordinary Session, the Bureau restored a seven percent reduction to the reimbursement rates for selected locally assigned HCPCS and specific CPT-4 procedure codes. In addition, the reimbursement fees for certain CPT-4 designated procedure codes were increased (*Louisiana Register*, Volume 27, Number 5). The bureau subsequently promulgated a rule to increase the reimbursement for certain designated CPT procedure codes related to speciality services (*Louisiana Register*, Volume 28, Number 8). As a result of the allocation of additional funds by the Legislature during the 2003 Regular Session, the bureau increased reimbursement for selected CPT surgical and medical codes. (*Louisiana Register*, Volume 29, Number 12). This Emergency Rule is promulgated to continue the provisions contained in the January 1, 2004 Rule. This action is being taken to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation in the Professional Services Program and recipient access to providers of these medically necessary services.

### **Emergency Rule**

Effective for dates of service on or after May 1, 2004, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases the reimbursement paid to physicians for selected surgical and medical services provided to designated Medicaid recipients.

#### **Pediatric Surgery Services**

A. Services include selected surgery services provided by the primary servicing physician to Medicaid recipients from 11 through 15 years of age. Physicians' Current Procedural Terminology (CPT) surgical procedure codes (10021-69990) shall be reimbursed at 100 percent of the Medicare Region 99 allowable for 2002, except for procedure codes on file that are in non-pay status, procedure codes for deliveries (59410) and (59415) or those payable with a fee greater than 100 percent of the Medicare Region 99 allowable for 2002.

B. Surgical services modified with modifier 63 (procedure performed on infants less than 4 kg) shall be reimbursed at 125 percent of the fee on file.

#### **Pediatric Medical Services**

A. Services include selected medical services provided by the primary servicing physician to Medicaid recipients from birth through 15 years of age. Physicians' Current Procedural Terminology (CPT) medical procedure codes (90918-99199) shall be reimbursed at 100 percent of the Medicare Region 99 allowable for 2002, except for procedure codes on file that are in non-pay status, procedure codes for conscious sedation (99141) and (99142) or those payable with a fee greater than 100 percent of the Medicare Region 99 allowable for 2002.

Implementation of this Emergency Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services. Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this

Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Frederick P. Cerise, M.D., M.P.H.  
Secretary

0404#085

## **DECLARATION OF EMERGENCY**

### **Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing**

#### **Medicaid Eligibility? Medically Needy Program Incurred Deductions**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Emergency Rule under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by the 2002-2003 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid Program as necessary to control expenditures to the level approved in this schedule. The secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening and utilization review, and other measures as allowed by federal law." This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule promulgating the Medicaid Eligibility Manual in its entirety by reference in May of 1996 (*Louisiana Register*, Volume 22, Number 5). The department provides Medicaid coverage under the Medically Needy Program that is optional under Title XIX of the Social Security Act Section 1902(a)(10) and 42 CFR Subpart D Section 435.300. The Medically Needy Program includes those individuals or families who meet all AFDC or SSI related categorical requirements and whose income is within the Medically Needy Income Eligibility Standard. It also includes those individuals or families whose resources fall within the categorical limits, but whose income is above the Medically Needy Income Eligibility Standard. These individuals or families having income in excess of the Medically Needy Income Eligibility Standard can reduce excess income by incurring medical and/or remedial care expenses. This method used for determining eligibility is referred to as spend-down. A state may choose to exclude from incurred expenses those bills for services furnished more than three months before the Medicaid application is filed for initial eligibility. A state is required to deduct any current payment on such excluded expenses.

In compliance with Executive Order MJF 02-29, the bureau amended the policy governing the consideration of incurred expenses in the eligibility determination process for the Medically Needy Program (*Louisiana Register*, Volume 29, Number 1). The bureau now proposes to amend the January 1, 2003 Emergency Rule to clarify the policy

governing the consideration of incurred expenses in the eligibility determination process for the Medically Needy eligibility group. This action is being taken to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately \$603,262 for state fiscal year 2003-2004.

### **Emergency Rule**

Effective April 20, 2004, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions governing deductions for incurred medical expenses in the eligibility determination process for the Medically Needy eligibility group. Those bills for necessary medical and remedial services furnished more than three months before the Medicaid application is filed will be excluded as an incurred expense. Current payments on excluded expenses will be allowed as an incurred expense. The first budget period for the Medically Needy will begin the first month in the three-month period prior to the date of application in which the applicant received covered services.

Implementation of this Emergency Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Ben A. Bearden at the Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Frederick P. Cerise, M.D., M.P.H.  
Secretary

0404#084

## **DECLARATION OF EMERGENCY**

### **Department of Natural Resources Office of Conservation**

#### **Ground Water Management (LAC 43:VI.Chapters 1-29)**

Editor's Note: In accordance with OSR uniform formatting procedure, these rules have been moved from Title 33 to Title 43 for topical placement.

The Commissioner of Conservation (Commissioner), pursuant to the provisions of the Louisiana Administrative Procedure Act, Title 49, Sections 953(B)(1) and (2), 954(B)(2), as amended, on May 18, 2001, proposes to adopt the subject Emergency Rule regarding hearings for the designation of Critical Groundwater Areas and water well notification requirements on March 22, 2004. The Emergency Rules satisfy the requirements mandated by Act 49 of the 2003 Regular Session, which states that the Commissioner of Conservation has the authority to develop and promulgate rules and regulations for the determination of critical groundwater areas and collect notice of intent to drill water wells from the owners.

Failure to have hearing procedures for critical ground water area applications and procedures for collecting information on proposed well locations may endanger the commissioner's ability to manage the ground water resources

of the state, as directed by Act 49 (2003). The Act specifically requires that public hearings be held in such matters and requires the Commissioner to collect notice of intent to drill water wells from owners. The attached emergency rules provide the mechanism to meet these requirements.

This Emergency Rule is issued pending final rules.

This Rule will become effective on publication in the Louisiana Register and will remain in effect for 120 days.

### **Title 43**

### **NATURAL RESOURCES**

### **Part VI. Water Resources Management**

### **Subpart 1. Ground Water Management**

### **Chapter 1. General Provisions**

#### **§101. Applicability**

A. The rules and regulations of Chapter 1 through 29 shall be applicable to the commissioner's jurisdiction regarding:

1. critical ground water areas;
2. ground water emergencies; and
3. management of the state's ground water resources.

B. The rules shall not alter or change the right of the commissioner to call a hearing for the purpose of taking action with respect to any matter within the commissioner's jurisdiction.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 38:3097 et seq.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1584 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:

#### **§103. Definitions**

A. The words defined herein shall have the following meanings when used in these rules and regulations Chapters 1 through 29. All other words used and not defined shall have their usual meanings unless specifically defined in Title 38 of the Louisiana Revised Statutes.

*Aquifer?* a *ground water* bearing stratum of permeable rock, sand, or gravel.

*Beneficial Use?* the technologically feasible use of *ground water* for domestic, municipal, industrial, agricultural, recreational, or therapeutic purposes or any other advantageous purpose.

*Commission?* Ground Water Resources Commission authorized by R.S. 38:3097.4.

*Commissioner?* Commissioner of Conservation.

*Critical Ground Water Area?* an area in which, under current usage and normal environmental conditions, *sustainability* of an *aquifer* is not being maintained due to either movement of a salt water front or water level decline, or subsidence, resulting in unacceptable environmental, economic, social, or health impacts, or causing a serious adverse impact to an *aquifer*, considering the areal and temporal extent of all such impacts.

*Domestic Well?* a *well* used exclusively to supply the household needs of the owner lessee or his family. Uses may include drinking, cooking, washing, sanitary purposes, lawn and garden watering and caring for pets. *Domestic wells* shall also include *wells* used on private farms and ranches for the feeding and caring of pets and watering of lawns, excluding livestock, crops, and ponds

*Ground Water?* water suitable for any beneficial purpose percolating below the earth's surface which contains less than 10,000 mg/l total dissolved solids, including water suitable for domestic use or supply for a domestic water system.

*Ground Water Emergency?* an unanticipated occurrence as a result of a natural force or a man-made act which causes a *ground water* source to become immediately unavailable for *beneficial use* for the foreseeable future or drought conditions determined by the *commissioner* to warrant the temporary use of drought relief *wells* to assure the sustained production of agricultural products in the state.

*Large Volume Well?* a *well* with an 8 inch or greater diameter screen size or as further defined within these regulations.

*Person?* any natural *person*, corporation, association, partnership, receiver, tutor, curator, executor, administrator, fiduciary, or representative of any kind, or any governmental entity.

*Replacement Well?* a *well* located within 1,000 feet of the original *well* and within the same property boundary as the original *well*, installed within the same *aquifer* over an equivalent interval with an equivalent pumping rate, and used for the same purpose as the original *well*.

*Spacing?* the distance a water *well* may be located in relation to an existing or proposed water *well*, regardless of property boundaries.

*Sustainability?* the development and use of *ground water* in a manner that can be maintained for the present and future time without causing unacceptable environmental, economic, social, or health consequences.

*User?* any *person* who is making any *beneficial use* of *ground water* from a well or *wells* owned or operated by such person.

*Well or Water Well?* any *well* drilled or constructed for the principal purpose of producing *ground water*.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 38:3097 et seq.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1584 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:

### **Chapter 3. Critical Ground Water Area Application Procedure**

#### **§301. Who May Apply? Applicant**

A. Any owner of a well that is significantly and adversely affected as a result of the movement of salt water front, water level decline, or subsidence in or from the aquifer drawn on by such well shall have the right to file an application to request the commissioner to declare that an area underlain by such aquifer is a critical ground water area.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 38:3097 et seq.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1584 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:

#### **§303. Notice of Intent**

A. A The applicant shall have published a Notice of Intent to file an application for a critical ground water area designation the official parish journal of each parish affected by the proposed application. Such notice shall include:

1. name, address, and telephone number of the applicant;

2. a brief description of the subject matter of the proposed application;

3. a brief description of location including parish, section, township, range, and a map, which shall be sufficiently clear to readily identify the location of the proposed area;

4. a statement that, if the area is designated a critical ground water area, ground water use may be restricted;

5. a statement indicating where in the application can be viewed; and

6. a statement that all comments should be sent to:

Commissioner of Conservation

Post Office Box 94275

Baton Rouge, LA 70804-9275

ATTN: Director, Ground Water Resources Division

B. A Notice of Intent to apply for the removal or modification of a critical ground water area designation shall be published in the official parish journal of each parish affected by the proposed application. Such notice shall include:

1. name, address, and telephone number of the applicant;

2. a brief description of the subject matter of the proposed application;

3. a brief description of location including parish, section, township, range, and a map, which shall be sufficiently clear to readily identify the location of the proposed area;

4. a statement that, if the critical ground water area designation is removed or modified, current restrictions, if any, shall be rescinded or modified;

5. a statement indicating where in the application can be viewed; and

6. a statement that all comments should be sent to:

Commissioner of Conservation

Post Office Box 94275

Baton Rouge, LA 70804-9275

ATTN: Director, Ground Water Resources Division

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1584 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:

### **§305. Critical Ground Water Area Application**

#### **Content**

A. An application for a critical ground water area designation or the removal or a modification of a critical ground water area designation shall be filed with the commissioner of conservation at the above address no sooner than 30 days and no later than 60 days after publication of the Notice of Intent. Five copies of the application shall be filed, and must include:

1. the name, address, telephone number, and signature of applicant;

2. a statement identifying the applicant's interest which is or may be affected by the subject matter of the application;

3. identification of the source of ground water (aquifer) to which the application applies;

4. identification of the proposed critical ground water area or area proposed to be modified or removed from a

critical ground water area designation, including but not limited to:

a. its location (section, township, range and parish);

b. a map clearly identifying the boundaries of the subject area of the application, such as but not limited to:

i. U.S. Geological Survey topographic map of appropriate scale (1:24,000, 1:62,500, 1:100,000); or

ii. LA-DOTD Louisiana parish map outlining the perimeter of the area; or

iii. if digital map data is submitted in vector and/or raster formats, then the supporting metadata should be included;

5. statement of facts and evidence supporting one of the following claims:

a. that no action would likely negatively impact ground water resources in the aquifer, if the application is pursuant to §307.A;

b. that alleviation of stress to the aquifer has occurred; if the application is pursuant to §307.B;

6. the proof of publication of Notice of Intent to apply to the Commissioner.

B. Direct Action by the Commissioner for Critical Ground Water Area Hearing

1. The commissioner may initiate a hearing to consider action with respect to a specific ground water area.

2. The commissioner shall notify the public pursuant to §303 and §501.A prior to issuing an order.

3. The information presented by the commissioner at the hearing shall include but not be limited to information pursuant to §305.A and §307.

C. Application for Groundwater Emergency Hearing

1. Notwithstanding the provisions of Subsections A and B hereof, the commissioner may initiate action in response to an application of an interested party or upon the commissioner's own motion in response to a ground water emergency.

2. Subsequent to adoption of a proposed emergency order that shall include designation of a critical ground water area and/or adoption of a emergency management plan for an affected aquifer, the commissioner shall promptly schedule a public hearing pursuant to §501.B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1585 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:

### **§307. Criteria for a Critical Ground Water Area Designation**

A. Application for designation of a critical ground water area must contain a statement of facts and supporting evidence substantiating that under current usage and normal environmental conditions, sustainability of an aquifer is not being maintained resulting in unacceptable environmental, economic, social, or health impacts, or causing a serious adverse impact to an aquifer, considering the areal and temporal extent of all such impacts caused by at least one of the following criteria:

1. water level decline; and/or

2. movement of a saltwater front; and/or

3. subsidence in or from the aquifer caused by overall withdrawals.



B. If the applicant is applying for modification or removal of a critical ground water area designation, the application must contain a statement of facts and supporting evidence substantiating the alleviation of the original cause of designation.

C. Applicant shall also submit recommendations regarding the critical ground water area including but not be limited to the following:

1. the proposed boundaries of the critical ground water area; and

2. a proposal to preserve and manage the ground water resources in the critical ground water area pursuant to R.S. 38:3097.6.B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1585 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:

### **§309. Review of Critical Ground Water Area**

#### **Application**

A. Within 30 days of receipt of an application pursuant to §305.A, the applicant shall be notified whether or not the application is administratively complete.

B. If the commissioner determines an application is incomplete, the applicant shall be notified in writing of the information needed to make such application administratively complete.

C. The applicant shall have 180 days to respond to a request for more information by the commissioner, pursuant to Subsection B of this Section.

D. The commissioner may reject and return any application determined to be:

1. without merit or frivolous; or
2. incomplete after applicant's response to the commissioner's request for more information, pursuant to Subsection B of this Section, unless the remaining information required by the commissioner is minor in its nature.

E. Using available data, an analysis shall be made by the commissioner to determine if the area under consideration meets the criteria to be designated a critical ground water area or can be modified or removed from a critical ground water designation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1585 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:

### **§311. Recordkeeping**

A. The commissioner shall compile and maintain at the Office of Conservation a record of all public documents relating to any application, hearing, or decision filed with or by the commissioner.

B. The commissioner shall make records available for public inspection free of charge and provide copies at a reasonable cost during all normal business hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1586 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:

## **Chapter 5. Hearings**

### **§501. Notice of Hearings**

A. Critical Ground Water Area Preliminary Hearing Pursuant to §305.A or §305.B

1. Upon determination that an application is administratively complete and if the commissioner deems it necessary, a preliminary public hearing may be scheduled at a location determined by the commissioner in the locality of the area affected by the application.

2. Notice of the preliminary hearing shall contain the date, time and location of the hearing and the location of materials available for public inspection.

3. Such notice shall be published in the official state journal and official parish journal of each parish affected by the application at least 30 calendar days before the date of such hearing.

4. A copy of the notice shall be sent to the applicant, any person requesting notice, and local, state and federal agencies that the commissioner determines may have an interest in the decision relating to the application.

B. Critical Ground Water Area Hearing Pursuant to §305.C and §505.B

1. Should the commissioner determine that a preliminary hearing is not necessary, a draft order shall be issued, pursuant to R.S. 38:3097.6.A and a hearing shall be scheduled, pursuant to this Subsection.

2. The commissioner shall notify the public of any hearing initiated by the commissioner as a result of an action, pursuant to §305.C or §505.B, a minimum of 15 days prior to the hearing.

3. Hearings initiated by the commissioner shall be held in the locality of those affected by the draft order under §305.C or §505.B.

4. Notice of the hearing shall contain the date, time and location of the hearing and the location of materials available for public inspection.

5. Such notice shall be published in the official state journal and official parish journal of each parish affected by the commissioner's petition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1586 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:

### **§503. Rules of Conduct**

A. Hearings scheduled pursuant to this subpart shall be fact-finding in nature and cross-examination of the witnesses shall be limited to the commissioner and staff.

1. The commissioner, or a designee, shall serve as presiding officer, and shall have the discretion to establish reasonable limits upon the time allowed for statements.

2. The applicant may first present all relative information supporting their proposal followed by testimony and/or evidence from local, state and federal agencies and others.

3. All interested parties shall be permitted to appear and present testimony, either in person or by their representatives.

4. All hearings shall be recorded verbatim.

5. Copies of the transcript shall be available for public inspection at the Office of Conservation.

6. The testimony and all evidence received shall be made part of the administrative record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1586 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:

#### **§505. Decision of the Commissioner**

A. After hearings held pursuant to §305.C or §501.A, the commissioner shall issue a written decision in the form of a draft order based on scientifically sound data gathered from the application, the participants in the public hearing, and any other relevant information. The draft order shall contain a statement of findings, and shall include but shall not be limited to:

1. the designation of the critical ground water area boundaries; and
2. the recommended plan to preserve and manage the ground water resources of the critical ground water area pursuant to R.S. 38:3097.6.B.

B. The commissioner shall make the draft order and proposed plan to preserve and manage ground water resources of the proposed critical ground water area available to the applicant, participants in the original application hearing and any other persons requesting a copy thereof. The commissioner in accordance with §501.B shall initiate hearings on the draft order and proposed management controls in the locality of those affected by the commissioner's draft order.

C. Final Orders. The commissioner shall adopt final orders and plan to preserve and manage ground water resources after completion of §501.B. The final orders shall be made a part of the permanent records of the commissioner in accordance with §311 and shall be made available to the public upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1586 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:

#### **§507. Right of Appeal**

A. Critical Ground Water Area Designation orders of the commissioner may be appealed only to the Nineteenth Judicial District Court as provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 30:

### **Chapter 7. Water Well Notification Requirements in Non-Critical Ground Water Areas**

#### **§701. Applicability**

A. All new water wells, pursuant to Subsections B and C of this Section, are required to be installed by a licensed drilling contractor, pursuant to LAC 46:LXXXIX, and registered through the Department of Transportation and Development (DOTD) pursuant to LAC 57:I et seq. within 30 days after completion.

B. All new water wells except those types specifically listed in Subsection D of this Section, require a Water Well Notification form be submitted to the Commissioner at least 60 days prior to installation by the owner of the well.

C. All new water wells, pursuant to Subsections D of this Section, require a Water Well Notification form be submitted to the Commissioner no later than 60 days after installation by the owner of the well, pursuant to R.S. 38:3097.3.C(4)(a).

D. Water well types that require notification to the commissioner after installation are:

1. domestic well;
2. replacement well;
3. drilling rig supply well;
4. drought relief well;
  - a. use of the drought relief well type must be approved by the commissioner, pursuant to R.S. 38:3097.3.C(9), prior to installation; and
  5. all other wells the commissioner exempts for just cause:

- a. there shall be no just cause exemptions granted for large volume wells;
- b. the commissioner shall base exemptions on, but not limited to:
  - i. proximity to other wells;
  - ii. beneficial use; or
  - iii. latest scientific data.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 30:

#### **§703. Notification Requirements**

A. Pursuant to R.S. 38:3097.3.C(4)(a), the commissioner is authorized to collect the following information on the Water Well Notification form:

1. date drilled or estimated date to be drilled;
2. name of driller;
3. current ownership;
4. projected location of the well in longitude and latitude;
5. depth;
6. casing size; and
7. other reasonable information required by the commissioner.

B. Pursuant to §703.A.7, the following reasonable information is required by the commissioner on the Water Well Notification form:

1. Purpose of Form, including but not limited to:
  - a. prior notification, pursuant to §701.C;
  - b. post notification, pursuant to §701.D;
  - c. well exempted for just cause, pursuant to R.S. 38:3097.3.C(4)(a)(v);
  - d. drought well authorization, pursuant to R.S. 38:3097.3.C(9);
  - e. information change; or
  - f. cancellation of notification because well not drilled;
2. Well Information, including but not limited to:
  - a. owner's well number;
  - b. well use;
  - c. aquifer screened; and
  - d. estimated pumping rate;
3. Well Location, including but not limited to:
  - a. parish; and
  - b. longitude and latitude; or
  - c. if longitude and latitude is unavailable;
    - i. a map with the well location marked; or

- ii. a hand drawn map that includes enough detail that someone unfamiliar with the area can find the well;
- 4. Drilling Contractor, including but not limited to:
  - a. driller's contact information;
  - b. driller's license number; and
  - c. third party or consultant's contact information;
- 5. Owner's signature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 30:

#### **§705. Notification Review Process**

A. The commissioner shall review the submitted information, pursuant to §701.B, within 30 days.

- 1. The commissioner may:
  - a. issue an order placing restrictions on the well; or
  - b. request further reasonable information; or
  - c. take no action.
- 2. Should the commissioner request additional reasonable information for new wells, pursuant to §705.A.1, the commissioner shall have an additional 30 days from the time the information is received to review the Water Well Notification form.

B. For a large volume well, the commissioner may issue to the owner an order within 30 days of receiving prior notification, pursuant to §701.B, with one or more of the following restrictions:

- 1. fixing allowable production;
- 2. spacing; and
- 3. metering.

C. For all other wells in a non-critical ground water area, the commissioner may issue an order to the owner within 30 days of receiving prior notification, pursuant to §701.B, which may only fix spacing of the well.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 30:

#### **§707. Right of Appeal**

A. Within 30 days of the date of the correspondence regarding Paragraphs 1 and 2 of this Subsection, the applicant may appeal to the Ground Water Resources Commission to determine one of the following:

- 1. the reasonableness of the commissioner's request, pursuant to Section §705.A; or
- 2. the justification for the commissioner's well restriction order, pursuant to Section §705.B and C.

B. The appeal shall be addressed to:  
Ground Water Resources Commission  
Post Office Box 94275  
Baton Rouge, LA 70804-9275  
ATTN: Chairperson, Ground Water Resources Commission

C. The Commission may make a determination within 45 days from the date of the appeal, pursuant to R.S. 38:3097.3.C(4)(b)(iii), regarding the reasonableness of the commissioner's request, pursuant to Subsection A.1 of this Section.

D. The Commission may review the appeal of an applicant, pursuant to Subsection A.2 of this Section, and may make a determination regarding the commissioner's well restriction order.

1. The Commission may reject the commissioner's order and require the commissioner to reconsider such order.

2. An order that has been returned to the commissioner twice shall be considered a final decision.

E. Final decisions of the commissioner must be appealed to the Nineteenth Judicial District Court as provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 30:

James H. Welsh  
Commissioner

0404#004

## **DECLARATION OF EMERGENCY**

### **Department of Treasury Board of Trustees of the Louisiana State Employees' Retirement System**

Self-Directed Plan (LAC 58:I.Chapter 41)

Under the authority of R.S. 11:515 and in accordance with R.S. 49:951 et seq., the Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System ("LASERS") advertises its intent to enact LAC 58.I.4101 through 4133.

This emergency enactment is made necessary by the passage into law of Act 818 of the Regular Session of the Louisiana Legislature. That Act established the Self-Directed Plan ("SDP"), a new form of the Deferred Retirement Option Plan ("DROP") already administered by LASERS. Act 818 becomes effective January 01, 2004. This Rule is necessary to complete the implementation of the SDP and are being adopted in identical form through the ordinary promulgation process.

This Rule shall become effective on April 20, 2004, and shall remain in effect for 120 days or until they become effective through the normal promulgation process, whichever comes first.

#### **Title 58**

#### **RETIREMENT**

#### **Part I. State Employees' Retirement**

#### **Chapter 41. The Self-Directed Plan**

#### **§4101. SDP Provider**

A. The System shall procure a single provider, selected by a competitive process, for participants in the Self-Directed Plan ("SDP") to utilize in providing investment options for the deposits made during the accumulation period in the Deferred Retirement Option Plan ("DROP") or funds acquired through the Initial Benefit Option ("IBO"). The investment options shall not be available to the participants until the DROP funds are transferred to the SDP provider at the end of the accumulation period, or after the IBO funds are so transferred.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the State Employees' Retirement System, LR 30:

**§4103. Persons Vesting for DROP Prior to January 01, 2004**

A. Persons who became eligible for regular retirement prior to January 01, 2004 are eligible for participation in the SDP. Those persons may make an irrevocable election to transfer their DROP funds into the SDP. The DROP or IBO participants electing to transfer their funds into the SDP must transfer their entire DROP or IBO balance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the State Employees' Retirement System, LR 30:

**§4105. Eligibility for Transfer of Funds into SDP**

A. The only funds which may be transferred into the SDP are LASERS DROP or IBO funds. Transfers or rollovers from other sources shall not be allowed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the State Employees' Retirement System, LR 30:

**§4107. Rollovers out of SDP to Other Providers**

A. At all times after becoming eligible to withdraw funds from the SDP, DROP participants may elect to rollover funds to eligible providers. Such rollovers shall be subject to applicable Federal laws and the terms of the SDP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the State Employees' Retirement System, LR 30:

**§4109. Right to Recover Overpayments**

A. In the event of overpayment of funds are made by LASERS, then LASERS retains the ability at all times to recall funds from member at provider or to reduce future benefits pursuant to R.S. 11:192 to recover any such overpayment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the State Employees' Retirement System, LR 30:

**§4111. Time to Transfer Funds**

A. LASERS shall forward the entire deposit balance of a participant to the third party administrator within 5 working days from the end of the DROP accumulation period. LASERS may supplement or otherwise correct balances forwarded in those instances where there are errors, missing documents or incomplete reports submitted by agencies reporting earnings for the participant.

B. For participants in the Initial Benefit Option ("IBO") or for those DROP participants whose accumulation period is less than six months, LASERS shall transfer 80% of the DROP/IBO balance within 45 days from the date of initial transfer into the SDP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the State Employees' Retirement System, LR 30:

**§4113. Spousal Consent**

A. LASERS may halt the processing of a participant's request to enter the SDP until any spousal consent form required by law, LASERS or proof of divorce has been presented to the system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the State Employees' Retirement System, LR 30:

**§4115. Completion of Notification Form**

A. All DROP participants shall complete and submit a form (#9-2 or #9-2a) to inform LASERS that they are ending the accumulation period. This form shall be submitted at least 30 days prior to that date. Failure to submit this form could result in delaying access to DROP funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the State Employees' Retirement System, LR 30:

**§4117. Distributions**

A. Distributions shall be in accordance with the provisions of Chapter 27, Title 58, Part I of the Louisiana Administrative Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the State Employees' Retirement System, LR 30:

**§4119. No In-Service Distribution**

A. Distributions prior to the date of termination from employment with the state of Louisiana are strictly prohibited in accordance with applicable Internal Revenue Code Provisions. The selected provider shall not make a distribution without a verification of termination from LASERS.

AUTHORITY NOTE: Promulgated in accordance with RS. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the State Employees' Retirement System, LR 30:

**§4121. Civil Service Reinstatement**

A. DROP participants who have been removed from state employment, then reinstated pursuant to a ruling by the Civil Service board, shall immediately notify LASERS in writing of their reinstatement, along with a projected date of retirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the State Employees' Retirement System, LR 30:

**§4123. Beneficiary**

A. Each participant shall initially designate a beneficiary or beneficiaries to receive any amounts which may be distributed in the event of the death of the participant prior to the complete distribution of benefits. A participant may change the designation of beneficiaries at any time by filing a written notice on a form approved by LASERS. If no such designation is in effect at the time of participant's death, or if the designated beneficiary does not survive the participant by 30 days, his beneficiary shall be his surviving spouse, if any, and then his estate

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the State Employees' Retirement System, LR 30:

**§4125. Investment Options**

A. LASERS shall in its sole discretion select certain investment options to be used to determine income to be accrued on deferrals. These investment options may include specified life insurance policies, annuity contracts, or investment media issued by an insurance company. In any event, it shall be the sole responsibility of LASERS to

ensure that all investment options offered under the Plan are appropriate and in compliance with any and all state laws pertaining to such investments.

B. In the absence of a written directive from the participant, the provider shall automatically invest the participant's DROP funds in its discretion in an appropriate interim investment until specific investment directions are received. Such instructions regarding the delegation of investment responsibility shall remain in force until revoked or amended in writing by the participant. LASERS shall not be responsible for the propriety of any directed investment.

C. LASERS may, from time to time, change the investment options under the Plan. If LASERS eliminates a certain investment option, all participants who had chosen that investment shall select another option. If no new option is selected by the participant, money remaining in the eliminated investment option shall be moved at the direction of LASERS. The participants shall have no right to require LASERS to select or retain any investment option. To the extent permitted by and subject to any rules or procedures adopted by the administrator, a participant may, from time to time, change his choice of investment option. Any change with respect to investment options made by LASERS or a participant, however, shall be subject to the terms and conditions (including any rules or procedural requirements) of the affected investment options and may affect only income to be accrued after that change.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the State Employees' Retirement System, LR 30:

#### **§4127. Participant Investment Direction**

A. Participants shall have the option to direct the investment of their personal contributions and their share of any employer contributions among alternative investment options established as part of the overall SDP, unless otherwise specified by LASERS. A participant's right to direct the investment of any contribution shall apply only to making selections among the options made available under the SDP.

B. Each participant shall designate on the proper form or via website or telephone direction the investment that shall be used to determine the income to be accrued on amounts deposited. If the investment chosen by the participant experiences a gain, the participant's benefits under the SDP likewise shall reflect income for that period. If the investment chosen by a participant experiences a loss, or if charges are made under such investment, the participant's benefits under the SDP likewise shall reflect such loss or charge for that period.

C. Neither the State of Louisiana, LASERS, the administrator, nor any other person shall be liable for any losses incurred by virtue of following the participant's directions or with any reasonable administrative delay in implementing such directions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the State Employees' Retirement System, LR 30:

#### **§4129. Distributions from the Plan**

A. The payment of benefits in accordance with the terms of the Plan may be made by the trustee, or by any custodian or other person so authorized by LASERS to make such

distribution. Neither LASERS, the trustee nor any other person shall be liable with respect to any distribution from the Plan made at the direction of the employer or a person authorized by the employer to give disbursement direction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the State Employees' Retirement System, LR 30:

#### **§4131. Domestic Relations Orders**

A. In all instances wherein a person beginning participation in the SDP is a party to a Domestic Relations Order ("DRO"), properly worded and approved by LASERS, and such DRO is to divide DROP funds with the participant's former spouse, LASERS shall establish a means whereby the former spouse may choose the investment options for his or her portion of the SDP.

B. The selection of investment options shall be in accordance with §4125 of this Chapter.

C. Withdrawals from the SDP by either the member spouse (under whom all service credit accumulated) or the former spouse are prohibited until such time as the member spouse terminates state employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the State Employees' Retirement System, LR 30:

#### **§4133. Disclaimer**

A. LASERS makes no endorsement, guarantee or any other representation and shall not be liable to the Plan or to any participant, beneficiary, or any other person with respect to:

1. the financial soundness, investment performance, fitness, or suitability (for meeting a participant's objectives, future obligations under the Plan, or any other purpose) of any investment option in which amounts deferred under the Plan are actually invested; or

2. the tax consequences of the Plan to any participant, beneficiary or any other person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the State Employees' Retirement System, LR 30:

Robert L Borden  
Executive Director

0404#008

### **DECLARATION OF EMERGENCY**

#### **Department of Treasury Parochial Employees' Retirement System**

Definitions; Eligibility; Scope of Benefits  
(LAC 58:XI.103, 301, 303, 501, 505, and 509)

The Parochial Employees' Retirement System promulgates the following Emergency Rule as authorized by R.S. 11:1931, which provides that Rules and Regulations be adopted which will assure that the Parochial Employees' Retirement System will remain a tax-qualified retirement plan under the United States Internal Revenue Code and the regulations thereunder. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum

period allowed under the Administrative Procedure Act or until adoption of the final Rule, whichever occurs first.

The Board of Trustees for the Parochial Employees' Retirement System adopted this Rule on March 8, 2004, which was to be made effective as of April 20, 2004, the date of publication in the *Louisiana Register*. This intended action complies with the statutory law administered by the Board of Trustees for the Parochial Employees Retirement System.

These proposed Rules are meant to bring the Parochial Employees Retirement System into compliance with the United States General Agreement on Tariffs and Trade, the Uniformed Services Employment and Reemployment Rights Act of 1996, the Small Business Job Protection Act of 1996, and the Taxpayer Relief Act of 1997 (collectively known as GUST), and the Economic Growth and Tax Relief Reconciliation Act of 2001 (known as EGTRRA). These amendments to the Parochial Employees Retirement System were approved by the United States Internal Revenue Service pursuant to an IRS determination letter and were required to be implemented within 91 days of the issuance of the IRS determination letter.

Accordingly, the Board of Trustees for the Parochial Employees' Retirement System has determined that these Emergency Rules are necessary to avoid sanction or penalties from the United States Internal Revenue Service, and are necessary to maintain the Parochial Employees' Retirement System as a "qualified retirement plan" as that term is defined in the U.S. Internal Revenue Code.

## **Title 58**

### **RETIREMENT**

#### **Part XI. Parochial Employees' Retirement System**

##### **Chapter 1. General Provisions**

##### **§103. Definitions**

A. ...

\* \* \*

*Eligible Retirement Plan?* an Individual Retirement Account described in Internal Revenue Code Section 408(a), an individual retirement annuity described in Section 408(b), an annuity plan described in Internal Revenue Code Section 403(a), or a qualified trust described in Internal Revenue Code Section 401(a), that accepts the distributee's eligible rollover distributions. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an Individual Retirement Account or individual retirement annuity. An eligible retirement plan shall also mean an annuity contract described in Internal Revenue Code Section 403(b) and an eligible plan under Internal Revenue Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this system. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order.

##### *Eligible Rollover Distribution?*

a.i any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

ii. any distribution that is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life, or life expectancy, of the distributee or the joint lives, or joint life expectancies, of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more;

iii. any distribution to the extent such distribution is required under Internal Revenue Code Section 401(a)(9);

iv. the portion of any distribution that is not includable in gross income, determined without regard to the exclusion for net unrealized appreciation with respect to employer securities;

b. a hardship distribution.

2. A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, such portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution or qualified defined benefit plan described in Code Section 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1931.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Parochial Employees' Retirement System, LR 30:508 (March 2003), amended LR 30:

#### **Chapter 3. Eligibility**

##### **§301. Persons not Eligible for Membership; Leased Employees**

A. Leased employees or persons considered by the system as leased employees of an employer shall not be eligible to participate. Leased employee shall mean any person who is not employed by an employer and pursuant to an agreement between the employer and any other person or entity ("leasing organization") has performed services for the employer (or for related persons determined in accordance with section 414(n)(6) of the Internal Revenue Code) on a substantially full-time basis for a period of at least 1 year, and such services are performed under primary direction or control by the employer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1931.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Parochial Employees' Retirement System, LR 30:

##### **§303. Creditable Service; Uniformed Services Employment and Reemployment Rights Act**

A. If a member takes a leave of absence to serve in the U.S. armed services, the terms of which are governed by the Uniformed Services Employment and Reemployment Rights Act ("USERRA"), then upon the member's return to employment with the employer within five years from the leave of absence, the member shall be permitted to make the member contributions called for under the system as if the member had continued employment, and if so made, the member shall be given creditable service under the system for that period of time. The member contributions to the system as permitted under this Section shall be made ratably

over a period of time equaling the period the member was in the U.S. armed services, but in no event shall such period exceed five years. If the returning member makes the member contribution, the employer shall be required to make an employer contribution to fund the employer's portion of the creditable service given to the returning member. The amount of the member's contribution and the employer's contribution shall be determined by the system's actuary. A member who does not return to employment with his employer shall not be affected by this provision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1931.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Parochial Employees' Retirement System, LR 30:

## **Chapter 5. Scope of Benefits**

### **§501. Limitation on Payment of Benefits**

A. - E.1. ...

2. The required beginning date shall be April 1 of the calendar year following the later of the calendar year in which the member attains 70 1/2 years of age, or the calendar year in which the employee retires. Effective for plan years beginning on or after January 1, 1998, the required beginning date shall be April 1 of the year following the later of the year the member attained 70 1/2 or the year he terminated employment.

F. ...

AUTHORITY NOTE: Promulgated in accordance with RS. 11:1931.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Parochial Employees' Retirement System, LR 30:508 (March 2004), amended LR 30:

### **§505. Compensation Limited**

A. In addition to other applicable limitations set forth in the plan, and notwithstanding any other provisions of the plan to the contrary, for plan years beginning on or after January 1, 1994 and before January 1, 2002, the annual compensation of each employee taken into account under the plan shall not exceed the Omnibus Budget Reconciliation Act of 1993 annual compensation limit. The Omnibus Budget Reconciliation Act of 1993 annual compensation limit is \$150,000, as adjusted by the commissioner of Internal Revenue for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Internal Revenue Code (see 26 U.S.C. 401 et seq.). The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the Omnibus Budget Reconciliation Act of 1993 annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

B. For plan years beginning on or after January 1, 1994 and before January 1, 2002, any reference in this plan to the limitations under Internal Revenue Code Section 401(a)(17) shall mean the Omnibus Budget Reconciliation Act of 1993 annual compensation limit set forth in this Section.

C. ...

D. For plan years beginning on or after January 1, 2002, the annual compensation limitation (section 401(a)(17) of the Internal Revenue Code) for the determination of a

retirement allowance shall not exceed \$200,000, as adjusted for cost-of-living under paragraph 401(a)(17)(B) of the Internal Revenue Code. If compensation for a prior period is taken into account in determining a member's benefits accruing in the current plan year, the compensation for the prior period shall be subject to the compensation limit for the current year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1931.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Parochial Employees' Retirement System, LR 30:509 (March 2004), amended LR 30:

### **§509. Computation of Retirement Benefits**

A. - D.1.b.iii. ...

2. A member's retirement allowance shall be limited to \$160,000. The \$160,000 amount shall be adjusted for members retiring before age 62 or after age 65 under Internal Revenue Code Section 415(b)(2). The benefit limitation in the foregoing sentence shall be further adjusted by multiplying such limitation by the cost of living adjustment factor prescribed by the Secretary of the Treasury under Internal Revenue Code Section 415(d) in such manner as the Secretary shall prescribe. The new limitation will apply to limitation years ending within the calendar year of the date of the adjustment.

3. - 5.b.ii. Repealed.

6. Adjustment for Less than 10 Years of Creditable Service

a. If retirement benefits are payable under this retirement system to a member who has less than 10 years of creditable service in the retirement system, the dollar limitation referred to in the first Paragraph of this Subsection (\$90,000) will be multiplied by a fraction, the numerator of which is the member's number of years of creditable service in the system (not greater than 10), and the denominator of which is 10.

i. Effective for plan years beginning on or after January 1, 2002, "\$160,000" will be substituted for "\$90,000" above.

b. Repealed.

7. Annual Adjustment. The limitation provided in this Subsection shall be adjusted annually to the maximum dollar limits allowable by the secretary of the Treasury of the United States under Internal Revenue Code Section 415(d), such adjustments not to take effect until the first day of the fiscal year following December 31, 1987. The adjustment shall not exceed the adjustment in effect for the calendar year in which the fiscal year of the system begins. The adjusted earlier limitation is applicable to employees who are members of the system and to members who have retired or otherwise terminated their service under the system with a nonforfeitable right to accrued benefits, regardless of whether they have actually begun to receive benefits. This system shall be considered specifically to provide for such post-retirement adjustments. For any limitation year beginning after separation from service occurs, the annual adjustment factor is a fraction, the numerator of which is the adjusted dollar limitation for the limitation year in which the compensation limitation is being adjusted and the denominator of which is the adjusted dollar limitation for the limitation year in which the member separated from service. No adjustment shall be permitted with respect to limitations applicable after October 14, 1987.

8. - 10. ...

a. For purposes of R.S. 11:1942, 1962, and 1972, average compensation shall include any amounts properly considered as the regular rate of pay of the member, as defined in R.S. 11:231 and unreduced by amounts excluded from income for federal income tax purposes by reason of 26 U.S.C.A. §§125, 132(f), 402(a)(8), 402(h)(1)(B), 403(b), 414(h), or 457 or any other provision of federal law of similar effect.

b. For purposes of Subsection D, average compensation shall include total compensation payable by the employer and included in the employee's income for federal income tax purposes and shall exclude amounts not includable in the member's gross income by reason of 26 U.S.C.A. §§125, 132(f), 402(a)(8), 402(h)(1)(B), 403(b), 414(h) and 457 or any other provision of federal law. A member's highest three years shall be the period of consecutive calendar years (not more than three) during which the member both was an active participant in the plan and had the greatest aggregate compensation from the employer.

11. - 11.b. Repealed.

12. ...

E. All member contributions required to be made to this system shall be considered for tax purposes as contributions made pursuant to Internal Revenue Code Section 414(h)(2).

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1931.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Parochial Employees' Retirement System, LR 30:510 (March 2004), amended LR 30:

Thomas B. Sims  
Administrative Director  
and  
Dainna S. Tully  
Assistant Director

0404#058

## **DECLARATION OF EMERGENCY**

### **Department of Wildlife and Fisheries Wildlife and Fisheries Commission**

#### **Public Oyster Season Extension? Lake Borgne**

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and R.S. 49:967(D), and under the authority of R.S. 56:433(B)1 which provides that the Wildlife and Fisheries Commission may designate what parts or portions of the natural reefs may be fished for oysters, and a Resolution adopted by the Wildlife and Fisheries Commission on August 6, 2003 which authorized the Secretary of the Department of Wildlife and Fisheries to take emergency action to open areas if significant oyster resources are located, the secretary hereby declares:

The oyster season in the Lake Borgne Public Oyster Seed Ground as described in LAC 76:VII.513, including the three additional areas within Lake Borgne designated by the Wildlife and Fisheries Commission on January 8, 2004, will be extended until one-half hour after sunset on April 24, 2004.

Significant oyster resources remain within the Lake Borgne Public Oyster Seed Ground as evidenced by recent sampling by departmental biologists. It has been determined that limited additional harvest will not harm the integrity of the resource in this area and the Louisiana Oyster Task Force voted in support of this extension at its recent meeting held on March 10, 2004.

Dwight Landreneau  
Secretary

0404#006

## **DECLARATION OF EMERGENCY**

### **Department of Wildlife and Fisheries Wildlife and Fisheries Commission**

#### **Public Oyster Seed Ground Addition? Lake Borgne (LAC 76:VII.513)**

In accordance with emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and R.S. 49:957 which allows the Wildlife and Fisheries Commission to use emergency procedures to set oyster seasons, and in accordance with R.S. 56:6(12) and R.S. 56:434(A) which allows the Commission to enlarge the natural reefs of the state and to designate and set aside state water bottoms for the planting, growth, propagation, and policing of seed oysters, and under the authority given the Secretary by the Wildlife and Fisheries Commission on January 8, 2004 to take all necessary steps to effectuate the Declaration of Emergency and Notice of Intent, the Wildlife and Fisheries Commission hereby continues to declare and designate additional public oyster seed ground acreage on those water bottoms of Lake Borgne in St. Bernard Parish, more specifically described below, to be added to the Lake Borgne Public Oyster Seed Ground as described in Louisiana Administrative Code (LAC) 76:VII.513.

Due to the declining availability of oyster resources on the Lake Borgne Public Oyster Seed Ground, the current oyster lease moratorium on the issuance of new oyster leases, and the availability of oyster resource located on un-leased water bottoms adjacent to the current Lake Borgne Public Oyster Seed Ground, the expansion of the Lake Borgne Public Oyster Seed Ground is needed to enhance the economic sustainability of the Louisiana oyster industry. The oyster resource in this area would be immediately placed under active state management for the long-term benefit of the resource and protection of the natural reefs. Without the presence of the current oyster lease moratorium, this area would be open for leasing and, thus, the oyster resource would be available for harvest.

All statutes, regulations, and policies pertaining to the use of public oyster grounds will be in force in the additional Lake Borgne Public Oyster Seed Grounds described in Paragraphs 2, 3, and 4 below with the exception of any additional mitigation requirements levied from time to time for construction, oil and gas exploration, or pipeline construction activities for the term of this Declaration of Emergency.

In addition, the X and Y coordinates (1927 datum) used to describe the existing Lake Borgne Public Oyster Seed



Grounds shall be converted to Latitude and Longitude (1983 datum) so as to comply with R.S. 50:11.

This Declaration of Emergency will become effective May 6, 2004 and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule, whichever occurs first.

Therefore, the Wildlife and Fisheries Commission does hereby declare the following water bottoms of Lake Borgne as described below as the Lake Borgne Public Oyster Seed Ground.

#### **Title 76**

#### **WILDLIFE AND FISHERIES**

#### **Part VII. Fish and Other Aquatic Life**

#### **Chapter 5. Oyster**

#### **§513. Public Oyster Seed Ground Addition? Lake Borgne**

A. The Lake Borgne Public Oyster Seed Ground is described as that portion of the state water bottoms:

1. Beginning at the most northerly point of Malheureux Point latitude 30° 04' 48.216" north, longitude 89° 29' 02.247" west on the southern shoreline of Lake Borgne; thence southwesterly a distance of 16.6 miles to the most easterly point of Proctor Point latitude 29° 56' 46.459" north, longitude 89° 42' 51.039" west on the southwestern shoreline of Lake Borgne; thence northerly a distance of 5.6 miles to the most easterly point of Alligator Point latitude 30° 01' 39.731" north, longitude 89° 43' 01.767" west on the northern shoreline of Lake Borgne; thence northeasterly along the northern shoreline of Lake Borgne a distance of 19.1 miles to the intersection with the western shoreline of the Pearl River latitude 30° 10' 39.633" north, longitude 89° 31' 53.828" west; thence northerly along the western shoreline of the Pearl River a distance of 0.25 miles to a point latitude 30° 10' 52.888" north, longitude 89° 31' 53.736" west on the western shoreline of the Pearl River; thence easterly a distance of 1.15 miles to the Pearl River Beacon No. 8 latitude 30° 11' 00.429" north, longitude 89° 31' 28.187" west; thence southeasterly a distance of 7.5 miles to the point of beginning.

2. Beginning at the southeastern corner of the existing Lake Borgne Public Oyster Seed Ground as described in Paragraph 1 above, which is the most easterly point of Proctor Point, at latitude 29° 56' 46.459" north, longitude 89° 42' 51.039" west; thence westerly along the shoreline of Lake Borgne to latitude 29° 55' 54.300" north, longitude 89° 47' 57.000" west; thence north to latitude 30° 00' 46.000" north, longitude 89° 47' 57.000" west; thence east to the western boundary of the existing Lake Borgne Public Oyster Seed Ground at latitude 30° 00' 46.000" north, longitude 89° 42' 59.799" west; thence southerly along the western boundary of the existing Lake Borgne Public Oyster Seed Ground to the point of beginning.

3. Beginning at the southeastern corner of the existing Lake Borgne Public Oyster Seed Ground as described in Paragraph 1 above, which is the most easterly point of Proctor Point, at latitude 29° 56' 46.459" north, longitude 89° 42' 51.039" west; thence northeasterly along the southern boundary of the existing Lake Borgne Public Oyster Seed Ground to latitude 30° 01' 18.470" north, longitude 89° 35'

03.662" west; thence southwesterly to latitude 29° 53' 22.749" north, longitude 89° 42' 12.538" west; thence northwesterly to a point on the shoreline of Lake Borgne at latitude 29° 56' 12.711" north, longitude 89° 44' 11.750" west; thence northeasterly along the shoreline of Lake Borgne to the point of beginning.

4. Beginning at a point on the southern boundary of the existing Lake Borgne Public Oyster Seed Ground, as described in Paragraph 1 above, at latitude 30° 01' 25.814" north, longitude 89° 34' 51.025" west; thence northeasterly along the southern boundary of the existing Lake Borgne Public Oyster Seed Ground to latitude 30° 04' 01.816" north, longitude 89° 30' 22.277" west; thence southerly to latitude 30° 02' 25.177" north, longitude 89° 30' 22.277" west; thence southwesterly to latitude 30° 00' 26.497" north, longitude 89° 34' 05.521" west; thence northwesterly to the point of beginning.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(12) and R.S. 56:434(A).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 21:707 (July 1995), amended LR 30:

Dwight Landreneau  
Secretary

0404#009

#### **DECLARATION OF EMERGENCY**

#### **Department of Wildlife and Fisheries Wildlife and Fisheries Commission**

#### **Shrimp Reopening in Portion of State Outside Waters**

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons, and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall have the authority to open or close outside waters by zone each year as it deems appropriate upon inspection of and based upon technical and biological data which indicates that marketable shrimp, in sufficient quantities, are available for harvest, and a resolution adopted by the Wildlife and Fisheries Commission on January 8, 2004 which authorizes the Secretary of the Department of Wildlife and Fisheries to reopen any area closed to shrimping when the closure is no longer necessary, the secretary hereby declares:

That State Outside Waters from the eastern shore of the Atchafalaya River Ship Channel at Eugene Island as delineated by the Channel red buoy line to the eastern shore of Belle Pass at latitude 29°05'07" N and longitude 90°13'30" W, shall reopen to shrimping at 6:00 a.m., Monday, April 5, 2004.

According to recent shrimp samples taken by department personnel, small white shrimp which have over-wintered in these waters from January through March have reached marketable sizes and the closure is no longer necessary. Significant numbers of small white shrimp still remain in State Outside Waters west of the Atchafalaya River Ship

Channel to the western shore of Freshwater Bayou Canal at longitude 92°18'33" W, and this area will remain closed to shrimping until further notice.

Dwight Landreneau  
Secretary

0404#005

## **DECLARATION OF EMERGENCY**

### **Department of Wildlife and Fisheries Wildlife and Fisheries Commission**

#### **Small Coastal Shark Fishery Closure**

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, and the authority given to the Secretary of the Department by the Commission in its rule LAC 76:VII.357.M.2 which allows the secretary to declare a closed season when he is informed that the commercial small coastal shark seasonal quota for that species group and fishery has been met in the Gulf of Mexico, and that such closure order shall close the season until the date projected for the re-opening of that fishery in the adjacent Federal waters, the Secretary of the Department of Wildlife and Fisheries hereby declares:

Effective 11:30 p.m., March 18, 2004, the commercial fishery for small coastal sharks in Louisiana waters, as described in LAC 76:VII.357.B.1 (bonnethead shark, Atlantic sharpnose shark, blacknose shark and finetooth shark) will close through June 30, 2004. Nothing herein shall preclude the legal harvest of small coastal sharks by legally licensed recreational fishermen during the open season for recreational harvest. Effective with this closure, no person shall commercially harvest, purchase, exchange, barter, trade, sell or attempt to purchase, exchange, barter, trade or sell small coastal sharks or fins thereof within or without Louisiana territorial waters. Also effective with the closure, no person shall possess small coastal sharks in excess of a daily bag limit, which may only be in possession during the open recreational season. Nothing shall prohibit the possession or sale of fish by a commercial dealer if legally taken prior to the closure providing that all commercial dealers possessing small coastal sharks taken legally prior to

the closure shall maintain appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6.

The secretary has been notified by the National Marine Fisheries Service that the first semi-annual quota for small coastal sharks will be reached on or before March 18, 2004 and that the federal season closure is necessary to ensure that the semi-annual quota for small coastal sharks for the period January 1 through June 30, 2004 is not exceeded.

Dwight Landreneau  
Secretary

0404#001

## **DECLARATION OF EMERGENCY**

### **Department of Wildlife and Fisheries Wildlife and Fisheries Commission**

#### **Spotted Seatrout Recreational Regulations**

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set size limits for saltwater finfish, and R.S. 56:325.1(A)2 and B; the Wildlife and Fisheries Commission hereby adds the following Rule for the recreational harvest of spotted seatrout to be effective 12:01 a.m., Monday, April 26, 2004:

Within those areas of the state, including coastal territorial waters, south of Interstate 10 from its junction at the Texas-Louisiana boundary eastward to its junction with Louisiana Highway 171, south to Highway 14, and then south to Holmwood, and then south on Highway 27 through Gibbstown south to Louisiana Highway 82 at Creole and south on Highway 82 to Oak Grove, and then due south to the western shore of the Mermentau River, following this shoreline south to the junction with the Gulf of Mexico, and then due south to the limit of the state territorial sea, of the daily take and possession limit of 25 fish currently set out at R.S. 56:325.1A.(2)(b), no person shall possess, regardless of where taken, more than five spotted seatrout exceeding 25 inches total length. Those spotted seatrout exceeding 25 inches in length shall be considered as part of the daily recreational bag limit and possession limit.

Bill A. Busbice, Jr.  
Chairman

0404#010